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# Federal Register

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WHEN: Tuesday, October 5, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

# Contents

**Federal Register**

Vol. 75, No. 177

Tuesday, September 14, 2010

**Reader Aids**
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**2 CFR**
Subt. A.....55671
170.....55663

**12 CFR**
1249.....55892
1282.....55892

**14 CFR**
**Proposed Rules:**
39.....55691
117.....55852
121.....55852

**15 CFR**
**Proposed Rules:**
922.....55692

**17 CFR**
**Proposed Rules:**
4.....55698

**21 CFR**
510.....55676
520.....55676
558.....55676

**26 CFR**
1.....55677
**Proposed Rules:**
1.....55698
301.....55699

**33 CFR**
100.....55677
**Proposed Rules:**
167.....55709

**36 CFR**
**Proposed Rules:**
200.....55710

**40 CFR**
**Proposed Rules:**
51.....55711
52 (3 documents) .....55711, 55713, 55725
72.....55711
78.....55711
97.....55711
799.....55728

**43 CFR**
3000.....55678
3910.....55678
3930.....55678

**44 CFR**
64.....55683

**50 CFR**
17.....55686
679 (2 documents) .....55689, 55690
**Proposed Rules:**
17.....55730

# Rules and Regulations

Federal Register
Vol. 75, No. 177
Tuesday, September 14, 2010



## OFFICE OF MANAGEMENT AND BUDGET

### 2 CFR Part 170

**RIN 0348–AB61**

## Requirements for Federal Funding Accountability and Transparency Act Implementation

**AGENCY:** Office of Federal Financial Management, Office of Management and Budget (OMB).

**ACTION:** Interim final guidance to agencies with opportunity for comment.

**SUMMARY:** OMB is issuing interim final guidance to agencies to establish requirements for Federal financial assistance applicants, recipients, and subrecipients that are necessary for the implementation of the Federal Funding Accountability and Transparency Act of 2006, hereafter referred to as "the Transparency Act" or "the Act". This interim final guidance provides standard wording for an award term that each agency must include in grant and cooperative agreement awards it makes on or after October 1, 2010, to require recipients to report information about first-tier subawards and executive compensation under only those awards. This implementation of the requirement for reporting of subawards and executive compensation under Federal assistance awards parallels the implementation for subcontracts and executive compensation under Federal procurement contracts, which is in the Federal Acquisition Regulation.

**DATES:** The effective date for this interim final guidance is September 14, 2010. Comments on the interim final guidance must be received by no later than October 14, 2010.

**ADDRESSES:** Comments may be sent to regulations.gov, a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "FFATA subaward reporting" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record and considered in preparing the final guidance.

Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; telephone 202–395–7844; fax 202–395–3952; e-mail *mpridgen@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–7844 (direct) or (202) 395–3993 (main office) and e-mail: *mpridgen@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On June 6, 2008 [73 FR 32417], the Office of Management and Budget (OMB) published proposed guidance to Federal agencies with an award term needed to implement requirements related to subaward reporting under the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252, hereafter referred to as "the Transparency Act" or "the Act"). The guidance was proposed for adoption in a new part 33 within title 2 of the Code of Federal Regulations (CFR).

We are adopting the interim final guidance in 2 CFR part 170, a different 2 CFR part than part 33 in which we originally proposed to adopt it in June 2008. The reason is that part 33 now is within a newly created subchapter in 2 CFR that is for OMB guidance related to pre-award responsibilities (for more information on the new 2 CFR subchapters, see the notice in today's **Federal Register** that adopts 2 CFR part 25). The content of the guidance following this preamble is better suited to another new subchapter for guidance on national policy requirements, a subchapter that includes part 170.

We received comments from 75 entities in response to the 2008 **Federal Register** notice, including: 29 State agencies and two associations of State officials; 16 institutions of higher education and an association of research universities; six nonprofit organizations and an association of nonprofits; two local governmental organizations and an association of local government officials; two commercial firms; one individual; and 14 Federal agencies. Some of the comments concerned subaward reporting under the Transparency Act but were not directly related to the content of the guidance. For example, we received comments that suggested:

- Specific data elements that either should be included in, or excluded from, the information that will be required for each subaward.
- A need for better definitions of some data elements or clarification of the information desired in some data fields.
- Using the same information technology systems for submission of data on both: (1) Subawards under Federal assistance awards subject to the Transparency Act's requirements; and (2) subcontracts that entities receiving Federal procurement contracts must submit under the Act.
- Other specific features that it would be important to include in those information technology systems.

When we received them in 2008, we referred comments that do not directly relate to the policy guidance to the appropriate Federal agency groups, including the groups that were working on the design of systems to which entities will submit data to fulfill their reporting responsibilities under the Act. As stated in the 2008 **Federal Register** notice, the data elements and other aspects of subaward reporting are separate from the policy guidance. The General Services Administration has recently published the information collections with an opportunity for public comment that provide the specific data elements required for Transparency Act reporting of subawards and executive compensation [75 FR 43165]. The Federal acquisition councils have simultaneously published for public comment their proposed information collection for subcontract reporting pursuant to the Transparency Act.

As it was proposed in 2008, the new part 33 would have required direct recipients of Federal agency awards and, with some exceptions, subrecipients at all lower tiers (if their

subawards were subject to Transparency Act reporting requirements) to have DUNS numbers and register in the CCR. Since the publication of the June 2008 proposal, OMB proposed a new part 25 to 2 CFR on February 18, 2010 [75 FR 7316]. The proposed part 25 superseded the DUNS number and CCR elements of the June 2008 notice and limited the DUNS number requirement to applicants, recipients, and first-tier subrecipients only. The preamble of the February 2010 **Federal Register** document also contained responses to the public comments on the DUNS and CCR requirements proposed in June 2008. Part 25 is being finalized in another document in this section of today's **Federal Register.** Therefore, the DUNS and CCR requirements will not be addressed further in this document. The remainder of this document addresses the portions of the 2008 proposal related to reporting of subawards, as well as the additional reporting on executive compensation that is required by the subsequent amendment to the Transparency Act. In developing the interim final policy guidance on subaward reporting, we considered:

- All comments relevant to that subject in the 2008 proposal;
- The experience gained under the guidance for, and practical implementation of, recipient reporting required by section 1512 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, hereafter referred to as "the Recovery Act"), which we consider to be the pilot program for subaward reporting envisioned by paragraph (d)(1) of section 2 of the Transparency Act; and
- New transparency and Open Government policies put in effect since the publication of the 2008 proposal, including the amendment of the Transparency Act by section 6202 of Public Law 110–252 to require the reporting of the names and total compensation of a recipient's or subrecipient's five most highly compensated executives.

Because most aspects of this guidance were proposed in 2008, with opportunity for comment, and given the public benefits to be gained by expediting the implementation of subaward reporting under the Transparency Act, we are publishing this guidance as interim final.

The following section provides detailed responses to comments that we received on the portions of the guidance proposed in 2008 that are relevant to subaward reporting. Each response describes any revisions that we included in the interim final guidance as a result of the comment.

## II. Comments, Responses, and Changes to the Guidance

### *A. Comments on the 2008 Federal Register Preamble*

*Comment:* Two commenters noted that the preamble of the 2008 **Federal Register** notice missed one data element—an award title descriptive of the purpose of the funding action—when it listed the data elements that the Transparency Act specifies for Federal agencies' awards.

*Response:* The commenters are correct that the Act specifies the additional data element. The inadvertent omission did not affect the proposed guidance, however. The data elements were listed solely as background explanatory information in the preamble of the 2008 **Federal Register** notice.

*Comment:* With respect to that same list of data elements in the preamble, one commenter asked whether the inclusion of the country of the recipient and its parent entity was a typographical error. The commenter suggested that the data element likely was meant to be the *county,* rather than the *country.*

*Response:* Although the specifics of the data elements do not affect the guidance, the data element specified in the Transparency Act is the country, rather than the county.

### *B. General Comments Related to the Act and Guidance*

*Comment:* Thirty nine commenters expressed concern that recipients and subrecipients must allocate additional resources in order to comply with the new requirements for subaward reporting. They cited the need to change business processes and systems to begin to collect data that they are not collecting now and do it electronically. They also noted the continuing need for resources to compile and report data after that initial transition period. Most of the commenters noted the fiscal impact of subaward reporting and the provision in the Transparency Act that provides for recovering the additional costs. Some State agencies expressed concern that the increased administration costs would deplete resources available for program purposes and some suggested that the new requirement is an unfunded mandate. Some institutions of higher education noted that the limitation in OMB Circular A–21 on recovery of indirect costs could prevent them from recovering those costs from their Federal awards. Some State agencies suggested that the costs should be allocable as direct program costs. A number of commenters were concerned that the added burdens of reporting could discourage some entities, especially smaller subrecipient entities, from applying for Federal grants.

*Response:* This guidance requires only prime grant recipients to report to the Federal Government on subawards and executive compensation. Nevertheless, we understand the administrative changes and effort that are associated with reporting on subawards. As section (d)(2)(A) of the Transparency Act provides, recipients and subrecipients are allowed "to allocate reasonable costs for the collection and reporting of subaward data as indirect costs." We will assess the overall cost impact of the new requirements on recipients and subrecipients, as well as their ability to recover the indirect costs under current limitations in statute, policy, program regulations, or practice.

*Comment:* Nine commenters suggested that it was premature to propose the policy guidance. Among reasons given were that we did not yet provide details about all data elements that will be required in each report of an obligating action, the definitions of the data elements, and the reporting format and procedures that will be used. A few commenters noted that the award term in the proposed guidance referred to a Web site at which entities would submit subaward data but observed that the site was not ready to receive data and had no further details on what or how to report. One commenter asked if there was an exception process when there are systems issues to be resolved.

*Response:* We revised the wording of the award term to further clarify that the Web site will be the source of the detailed information on what to report (*i.e.,* the specific data elements and their definitions) and how to report (*i.e.,* the formats and information technology system features). That information will be posted at the Web site before non-Federal entities are required to report data on subaward obligations. In addition, the General Services Administration's Paperwork Reduction Act information collection also provides the specific data elements required for Transparency Act reporting.

There is an important distinction to be made between the policy guidance contained in this **Federal Register** notice and the operational details on what and how to report. Under the current statute, non-Federal entities will be required to report subaward data, a basic requirement that does not depend on the specific data elements and

procedural details. The policy guidance and the award term it contains are the means for having agencies formally communicate that basic statutory requirement to recipients and subrecipients. Neither the guidance nor the award term needs to contain the operational details about the specific data elements to be reported or how to submit the data. Both need to be in place now so that agencies can use the award term to provide timely notification to recipients and subrecipients about their responsibilities.

Nonetheless, we fully recognize that the operational details also are very important. To ensure adequate opportunity for public comment, we have published the data elements and other details that affect the public. Further, we have made every effort to minimize the burden associated with Transparency Act reporting, through both pre-population of data and use of an electronic system that facilitates streamlined reporting [75 FR 43165–43166]. With respect to the question concerning the exception process, the Transparency Act does not provide for exceptions due to unresolved systems issues.

*Comment:* Twenty two commenters recommended delaying the January 1, 2009, date on which the Transparency Act provided that subaward reporting would begin. They stated that the implementation timeframe was not reasonable, especially since the procedures for compiling and submitting the data would not be set until after completion of a pilot that had not yet begun. Seven of the commenters also recommended that OMB grant the 18-month extension to the deadline that the Act allowed for subrecipients under awards to State, local, and tribal governments, if the Director of OMB determined that compliance would impose an undue burden for those subrecipients.

*Response:* A subaward reporting pilot was conducted in the Fall of 2008 to assess the burden of subaward reporting on recipients and subrecipients. The results of the pilot were mixed and showed that there were various unresolved policy and procedural issues surrounding subaward reporting. In 2009, the Recovery Act was enacted and required reporting of funds awarded to prime recipients, subrecipients and vendors. The Recovery Act reporting effort, which commenced in October 2009, served as a demonstration of subaward reporting on a governmentwide scale which is why we consider it to be the pilot program for subaward reporting envisioned by paragraph (d)(1) of section 2 of the Transparency Act. Various audits and reviews have been conducted on Recovery Act implementation. Some of the reports from those reviews are available on the Recovery.gov Web site under the "Accountability" section and include information on recipient challenges with implementing reporting requirements under the Recovery Act.

In a memorandum dated April 6, 2010 with the subject line "Open Government Directive—Federal Spending Transparency," OMB established an October 1, 2010 deadline for Federal agencies to initiate subaward reporting pursuant to the Transparency Act and provide a timeline for additional guidance to assist in meeting the goals established in the memorandum.

*Comment:* Three commenters pointed out that the proposed guidance did not include a detailed implementation of a Transparency Act provision that provides an exemption from the subaward reporting requirement for an entity that demonstrates to the Director of OMB that its gross income, from all sources, did not exceed $300,000 in the previous tax year. The Act provides for the exemption until the Director determines that the imposition of the reporting requirement will not place an undue burden on such entities. The commenters noted that the guidance did not disclose how to request a reporting exemption, what proofs would be required, and what evaluation factors OMB would use in granting exemptions.

*Response:* The award term in Appendix A to part 170 of the guidance properly includes that exception to the subaward reporting requirement. Section 2(e) of the Transparency Act allows the Director, OMB, to exempt any entity that demonstrates its gross income, from all sources, did not exceed $300,000 in the entity's previous tax year, from reporting the first-tier subaward information, until the Director determines that the imposition of the reporting requirement will not cause undue burden on the entity. The Director has exempted entities that fall under this category at this time.

*Comment:* Two commenters raised questions concerning the applicability of the Paperwork Reduction Act (PRA). One stated that the Transparency Act and guidance did not comply with the PRA. The other suggested that OMB could not yet provide the PRA clearance for the information collection associated with subaward reporting, because the data elements and format were not specified in the guidance proposed on 2008.

*Response:* As stated in the response to a previous comment, the nature of the guidance is distinct from that of the operational details. What requires PRA clearance, as correctly noted by the second commenter, are the data elements and similar details for which reporting burdens can be estimated. The General Services Administration has recently published the information collections for public comment that provide the specific data elements required for Transparency Act reporting of subawards and executive compensation [75 FR 43165]. It is not pertinent to the issuance of the guidance in this **Federal Register** notice on the basic statutory requirement to report.

*Comment:* With respect to the requirement to report each action under a subaward that obligates $25,000 or more in Federal funding, ten commenters recommended raising the $25,000 threshold due to the potential magnitude of the burdens, especially on small entities. The commenters suggested setting the threshold at $100,000 or more, to be parallel with their State's reporting requirement, the simplified acquisition threshold for Federal procurement contracts, or the threshold in OMB Circular A–133 at which an entity must have a single audit. One State agency asked if it could request a waiver to increase that threshold.

*Response:* We made no change to the threshold in the guidance. The $25,000 threshold is set by the Transparency Act and there is no provision in the statute that authorizes a waiver to increase the threshold.

*Comment:* Four commenters stated that the new subaward reporting requirement overlapped with at least some Federal agencies' existing requirements for reporting on subawards. As an example, one commenter cited information about subawards that applications to agencies either contain or could be amended to contain. Two non-Federal entities and one Federal agency were concerned that the existing and new requirements could be redundant, thereby unnecessarily increasing the burdens of subaward reporting. One Federal agency stated that it currently obtained information about all subawards, and not just those above the $25,000 threshold, and did not want to lose insight into the subawards below $25,000 due to the Transparency Act threshold.

*Response:* Relatively few Federal agency awarding offices currently obtain the details about each subaward obligation that they would need to do the reporting under the Transparency Act. Many agencies receive individual applications that identify the applicant's

intent to make a subaward of a specified amount if its application is successful. However, the actual subaward recipient may not be known at that time or, if known, the amount that a successful applicant obligates may not be the same as it originally planned and proposed, for various reasons (*e.g.,* the Federal award it receives may be for a lesser amount than it proposed or it may rebudget after receiving the award, as pertinent Federal rules allow it to do without the Federal agency's prior approval). Given that what the application describes is only a plan, it cannot serve as a definitive source of information for Transparency Act purposes. At this time, we are not asking for reporting of subaward information below the first-tier.

With respect to the relatively few Federal awarding offices that do obtain post-award data on actual subaward obligations, we are directing those agencies to take the necessary steps to ensure that their recipients are not required, due to the combination of agency-specific and Transparency Act reporting requirements, to submit the same or similar data multiple times during a given reporting period.

*Comment:* Five commenters asked about the consequences of a subrecipient's noncompliance with requirements related to the Transparency Act. Two commenters expressed concern that delivery of essential services could be interrupted if awards could not be made or payments had to be suspended.

*Response:* After a subaward is made, the range of consequences that may result from the subrecipient's material failure to comply with a requirement related to the Transparency Act should be no different than it is for a material failure to comply with other Federal requirements. The same remedies are available to the recipient and—should the matter of a subrecipient entity's noncompliance become an issue for the Federal Government—to a Federal agency.

*C. Comments Related to the Applicability of the Guidance*

*Comment:* One commenter stated that the guidance should not apply to loan guarantees because the definition of "federal award" in the Transparency Act does not explicitly mention them. The commenter expressed concern that the requirement in the guidance for lenders, small businesses, and rural businesses to obtain DUNS numbers could be an added barrier to their participation in U.S. Department of Agriculture (USDA) rural development and Small Business Administration (SBA) programs that stimulate financing for small and rural businesses. The commenter recommended not applying the guidance to loan guarantees under those programs until a **Federal Register** notice was published, with an opportunity to comment, that proposed applying Transparency Act requirements to those programs specifically.

*Response:* Although the 2008 **Federal Register** notice proposed applicability of the guidance broadly to all of the types of financial assistance subject to the Transparency Act, we revised the interim final guidance to implement at this time only the reporting requirements specifically for first-tier subawards under grants and cooperative agreements in light of these public comments and concerns. We are deferring to a later date the implementation of subaward reporting under other financial assistance subject to the Act, which includes loans and loan guarantees, as well as lower-tier subawards.

We understand the legitimate concern that additional administrative requirements can have an impact on financial assistance applicants and recipients under any Federal program. However, to publish a notice that lists the hundreds of programs individually would be unnecessary and impractical.

*Comment:* One Federal agency suggested we make it clearer that financial assistance provided through assessed and voluntary contributions is subject to the guidance, by explicitly listing that type of assistance in the proposed definition of "Federal financial assistance subject to the Transparency Act." The definition in section 33.325 of the proposed guidance included them only implicitly, through the inclusion of a category of "other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal funds."

*Response:* We agree and made the change to the guidance (in what now is section 170.320).

*Comment:* A Federal agency recommended that the guidance not apply to loans, loan guarantees, interest subsidies, and insurance that recipients provide as subawards to subrecipients. The agency stated that the Transparency Act did not explicitly identify them as subawards and their inclusion would be inconsistent with coverage of the administrative requirements for grants to and agreements with educational and other nonprofit organizations that are in 2 CFR part 215 (OMB Circular A–110).

*Response:* We did not revise the guidance. The Act requires OMB to "ensure that data regarding subawards are disclosed in the same manner as data regarding other Federal awards." The Transparency Act's definition of "federal award" includes types of financial assistance awards that are not subject to the administrative requirements in 2 CFR part 215, and therefore includes them both at the prime tier between Federal agencies and recipients and at lower tiers between recipients and subrecipients. While only subawards under grants and cooperative agreements need to be reported at this time, subawards under all types of Federal financial assistance subject to the Transparency Act will need to be reported at a later date.

*Comment:* One Federal agency expressed concern that it would be difficult to provide an actual dollar amount associated with a transfer of title to Federally owned property.

*Response:* We revised the definition of "Federal financial assistance subject to the Transparency Act" in that section (which now is section 170.320) to clarify that the guidance does not apply to transfers of title to Federally owned property.

*Comment:* One Federal agency suggested amending the proposed guidance to explicitly exclude Cooperative Research and Development Agreements (CRDAs) under 15 U.S.C. 3710a from coverage under the Transparency Act. CRDAs are instruments authorized for use between Federal laboratories and non-Federal entities for technology transfer purposes. The commenter noted that the statute permits a Federal laboratory to receive funds from a non-Federal entity under a CRDA and expressed concern that a funds transfer might be perceived as a subaward to the Federal laboratory.

*Response:* We agree and made a change to the definition of "Federal financial assistance subject to the Transparency Act" in that section (which now is section 170.320) of the guidance. The definition of "cooperative research and development agreement" in 15 U.S.C. 3710a excludes transactions under which Federal funds are provided to non-Federal entities. It also distinguishes CRDAs, which are not Federal financial assistance awards, from cooperative agreements under the Federal Grant and Cooperative Agreement Act in 31 U.S.C., chapter 63.

*Comment:* One commenter noted that the proposed guidance did not apply to a Federal agency that receives an award from another agency and asked whether it would apply to an award that a Federal agency receives from a non-Federal entity.

*Response:* Yes, the guidance applies. The non-Federal entity would have to report the subaward. At this time, the

non-Federal entity would not have to report lower-tier subawards. To clarify this, we revised the definition of "entity" in the award term that now is in Appendix A to part 170.

*Comment:* One commenter stated that it acts as a fund manager overseeing accounts for Federal agencies into which voluntary payments, court-ordered settlements, fines, and other sources of funds are deposited. It noted that the Federal agency specifies the entities to whom funds from those accounts are obligated. The commenter asked if it is the recipient in that case and the other entities are the subrecipients, or if the entities to whom it awards the funds are the prime recipients because the Federal agency makes the funding decisions.

*Response:* If the funds cited in the comment are available for obligation or reobligation for Federal program purposes, this situation is somewhat similar to that of a grant under which the recipient is authorized to: (1) Make loans for program purposes to subrecipients; (2) merge the funds received from those subrecipients' loan payments back into the corpus of grant funding; and (3) use those repaid funds to make new loans. In both that case and the case raised by the commenter, the non-Federal entity that manages Federal agency funds that are available for program purposes is the recipient. The entities that receive the funds that the recipient obligates or reobligates are subrecipients.

*Comment:* One commenter suggested not applying the reporting requirement below the first-tier of subawards under mandatory programs such as block and formula grants and other types of assistance to State, local, and tribal governments.

*Response:* The Transparency Act does not authorize a limitation on the reporting requirement to the first-tier of subawards. At this time, however, we are deferring to a later date the implementation of the reporting requirement below the first-tier.

*Comment:* Six commenters asked whether the requirements in the guidance applied to prior program announcements, awards, and subawards. One of the commenters pointed out that an applicant who already had applied in response to a previously issued announcement might have decided not to apply if it had been informed about the Transparency Act requirements prior to doing so. Others noted they would need to amend previously issued awards if the requirements applied to them.

*Response:* New Federal, non-Recovery Act funded grant awards and cooperative agreements with an award date on or after October 1, 2010, and resulting first-tier subawards, are subject to the reporting requirements in this guidance. New Federal grants and cooperative agreements are grants and cooperative agreements with a new Federal Award Identification Number (FAIN) as of October 1, 2010. They do not include obligating actions on or after October 1, 2010, that provide additional funding under continuing grants and cooperative agreements awarded in prior fiscal years.

*D. Other Comments*

*Comment:* Two commenters raised questions about the dates in the proposed paragraph 33.200(a)(2). One commenter asked what was meant by the effective date of the part cited in paragraph (a)(2)(i). The other commenter recommended changing the date in paragraph (a)(2)(ii). That paragraph required a Federal agency to incorporate Transparency Act requirements into a program announcement or other application instructions if awards would be made after October 1, 2008, in response to applications using those instructions. The commenter recommended changing the date to December 31, 2008.

*Response:* The guidance in 2 CFR part 170 is effective today, with its publication in the **Federal Register**. We revised the date in paragraph 170.200(a)(2)(ii) to October 1, 2010.

*Comment:* Three commenters noted that some entities may want to take advantage of the flexibility that the award term in the proposed guidance gave a recipient to either: (1) Pass the responsibility for reporting on lower-tier subawards to the subrecipients who made those subawards; or (2) do that reporting itself, which would require the recipient to collect the information from lower-tier subrecipients. One, a State agency, stated that it maintains a complete data base that should be sufficient to meet the Transparency Act requirements.

*Response:* We recognize the burdens associated with subaward reporting and understand that programs and organizations differ. However, prime recipients will not have the option to delegate reporting of subgrant information to their subrecipients. We believe that this may help reduce reporting burden on subaward recipients.

*Comment:* Six commenters asked for clarification on the meaning of the phrases "date of obligation" and "obligating action" used in the award term in the proposed section 33.220 with respect to subawards. Two commenters asked how the date of obligation would be defined for a subaward that allowed reimbursement of pre-award costs a subrecipient incurred on or after a "start date" that was prior to the date on which the subaward was signed.

*Response:* With respect to a subaward, an obligating action is a transaction that makes available to the subrecipient a known amount of funding for program purposes. Examples include a new subaward, an incremental funding amendment that increases the total amount of a subaward, or a quarterly allotment under a formula grant program.

We made no change to the guidance, since "obligations" is a well established term in OMB's guidance on administrative requirements for grants and agreements (2 CFR part 215 and the common rule that Federal agencies adopted to implement OMB Circular A–102). Under most Federal grants and cooperative agreements, recipients regularly report amounts of "unobligated balances" to Federal agencies on the standard financial reporting forms.

The date of obligation for a subaward is the date on which the recipient authorizes the subrecipient to incur costs against the known amount it obligates, and does so in a way that legally obliges the recipient to provide funds to cover costs that are incurred in accordance with the subaward's terms and conditions. That date usually is associated with the signature of a formal document, either the initial subaward or an amendment to it. That is distinct from the "start date" cited in the example of pre-award costs, since we assume that the subrecipient incurs those costs at its own risk, in anticipation of the subaward, and that the recipient has no legal obligation—until it signs the subaward—to provide award funds to cover those costs.

*Comment:* Eight commenters questioned whether the guidance required reporting of obligations or disbursements as the award amounts. One commenter recommended that recipients and subrecipients report "expenditures," the term used in the Transparency Act. Four State agencies asked how "obligations" would be determined in some programs that adjust the amount a subrecipient receives at some time after the initial obligation. One of the agencies cited the example of the school lunch program, under which the amount obligated is not known until after the subrecipient expends the funds.

*Response:* The guidance requires reporting of each obligation, rather than each disbursement against the amount

obligated. If a recipient obligates a specific known amount for a subaward, even if it may be adjusted later, it must report the obligation when it is made. For a program like the school lunch program, however, where the initial subaward provides the subrecipient with an open-ended authorization of unspecified amount, the obligation date corresponds to the date on which the amount of the obligation is specified. Reporting is required by the end of the month following the month in which the subaward obligation was made.

*Comment:* One commenter recommended revising the requirement to report each obligating action within 30 days of the date of obligation. The commenter suggested allowing reporting quarterly, semiannually, or annually.

*Response:* We changed the guidance and award term to require obligations to be reported no later than the end of the month following the month of the obligation. For example, if a subaward is made on October 2, 2010, the subaward information must be reported by no later than November 30, 2010.

*Comment:* Ten commenters requested additional clarification about the difference between a subaward, which must be reported under the Transparency Act, and procurement under an award, which is not subject to the reporting requirement.

*Response:* It is worth noting that recipients for many years have had to judge whether a transaction under their Federal award was a subaward or a procurement action. That is because a recipient must include different requirements in a subaward than it does in a procurement under an award, in accordance with the administrative requirements in 2 CFR part 215 (OMB Circular A 110) or the common rule implementing OMB Circular A 102. Also, when the transaction provides funds to a for-profit entity, the recipient must properly take into account whether the transaction would be more characteristic of a vendor relationship than a subrecipient under ___.210 of OMB Circular A–133. The judgments a recipient must make to decide whether a lower tier agreement is a subaward or procurement for Transparency Act reporting purposes are the same as the judgments it makes to establish which terms and conditions to include in the agreement. Prime recipients should refer to awarding agency supplemental guidance, if any, in making such a determination.

Two examples may help clarify the distinction, which is based on the purpose of the transaction between the recipient or subrecipient and the entity at the next lower tier. If the purpose of the lower-tier transaction is the same as the purpose of the substantive program supported by the Federal award at the prime tier, so that the recipient through that lower tier transaction is in effect handing a portion of the substantive program over to the lower-tier entity for performance, the lower-tier transaction is a subaward. The two examples follow:

- *Example 1: Provision of health services.* A Federal program provides funding to State agencies to deliver a variety of services for older citizens. If the State provides funds to a third party to carry out a type of service (*e.g.,* mental health services) that is authorized under the program and the State otherwise might deliver itself, the agreement is a subaward because the third party is carrying out substantive programmatic activity that is the purpose of the Federal award. If a recipient or subrecipient obtains the services of a third party to help in designing public service announcements or developing educational materials about the program—goods or services that the State or subrecipient needs to carry out the program that is the purpose of the award—that would be a procurement under the award or subaward.
- *Example 2: Research.* An agency makes an award to a university to investigate basic physics to understand why certain materials have the properties they do. To do some of the experiments, the university researchers need an instrument that does not yet exist. The university provides funding under the Federal award to a small firm to carry out a research and development project and develop an instrument. The award to the firm has the purpose of instrument development, and does not have the same purpose as the Federal award. The award to the firm is a procurement action. If the university instead made an award to the firm to perform some of the basic research on physics of materials that is the substantive program purpose of the Federal award, and the recipient determines it does not have a vendor relationship with the firm under this award as described in Sec. __.210 of the attachment to OMB Circular A–133, the award to the firm would be a subaward.

*Comment:* One commenter from a State agency said that it is unclear whether Medicaid is considered Federal financial assistance for the purposes of the subaward reporting requirement.

*Response:* There are no program exemptions under this guidance even though there are other types of exemptions which are described in the guidance. If a state makes a subaward under a grant or cooperative agreement to an entity other than an individual who is a natural person, the subaward is $25,000 or more, and no exemptions apply, the state would need to report the subaward.

*Comment:* Three commenters raised issues with wording in the award term in the proposed section 33.220 that related to the $25,000 reporting threshold for subawards. Two commenters asked for clarification on the meaning of "life of the subaward," as that phrase was used, both in the award term and the associated guidance to Federal agencies on use of the award term. Another commenter suggested that readers might perceive "$25,000 over the life of the subaward" to be inconsistent with "each action that obligates $25,000 or more in Federal funding." One of the commenters also suggested consistent wording to replace "a total value of $25,000" in one paragraph and "in that range" in another paragraph.

*Response:* With respect to the comment concerning the apparent inconsistency between "a total value of 25,000" and "each action that obligates $25,000 or more in Federal funding," it should be noted that the two phrases refer to related but different requirements addressing lower-tier subaward reporting. We have revised the interim final guidance to show that only recipient reporting of first-tier subawards will be required at this time, and therefore, the comment is no longer relevant. We have replaced the phrase "life of the subaward" with alternative wording that more clearly specifies when a recipient must include the Transparency Act reporting requirement in a subaward it makes to a subrecipient. For new Federal grants or cooperative agreements as of October 1, 2010, if the initial award is $25,000 or more, reporting of subaward information is required. If the initial award is below $25,000 but subsequent award modifications result in a total award of $25,000 or more, the award is subject to the reporting requirements, as of the date the award exceeds $25,000. If the initial award is $25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $25,000, the award continues to be subject to the reporting requirements of the Transparency Act.

*Comment:* One commenter asked for clarification concerning reporting requirements for incrementally funded subawards. The commenter gave as an example a subaward that a recipient expected to exceed $25,000 over the duration of the subaward, but for which

the initial obligation was less than $25,000.

*Response:* Each action that obligates $25,000 or more in Federal funds must be reported.

*Comment:* Three commenters asked whether a recipient or subrecipient would be required to report a downward adjustment in the amount of a subaward it had made previously.

*Response:* We made no change to the guidance. The award term that now is in section Appendix A to part 170 of the guidance refers recipients and subrecipients to the web site at which data submission instructions will be posted. Those instructions will include the specific data elements and their definitions that, as discussed in Section I of this **Federal Register** notice, have been established through a separate process under the Paperwork Reduction Act [75 FR 43165]. The instructions will address whether reporting of reductions in subaward amounts, sometimes called "deobligations," are a subcategory of obligations to be reported.

*Comment:* One commenter asked about the requirement to submit changed information other than subaward amounts, such as a change in subrecipient information.

*Response:* If the information that was reported was correct at the time it was reported and changed at a later date, there would be no need to subsequently revise the information in previously submitted reports. The updated information would be included in reports of subsequent obligations under the same subaward, however.

That is distinct from a case in which a recipient later discovers that information it reported was erroneous at the time it was reported. Questions concerning error corrections in that case are being considered by the interagency group developing the data elements and information technology systems for subaward reporting. As discussed in the response to the previous comment, the process for resolving those issues will include an opportunity for public input.

*Comment:* Four commenters asked how one would report subawards to recipients with multiple Federal funding sources. One commenter asked if the amount of funding from each program listed in the Catalog of Federal Domestic Assistance (CFDA) would need to be reported.

*Response:* Each action that obligates $25,000 or more in Federal funding would need to be separately reported. For new Federal grants or cooperative agreements as of October 1, 2010, if the initial award is $25,000 or more, reporting of subaward information is required. If the initial award is below $25,000 but subsequent award modifications result in a total award of $25,000 or more, the award is subject to the reporting requirements, as of the date the award exceeds $25,000. If the initial award exceeds $25,000 but funding is subsequently de-obligated such that the total award amount falls below $25,000, the award continues to be subject to the reporting requirements of the Transparency Act. If a single action obligates funding from multiple programs, the data submitted for that action would include the CFDA number for the program that is the predominant source of the Federal funding. If a program's funding is obligated by a separate amendment to the same subaward agreement that provides other programs' funding, however, then the data reported for each amendment to the agreement would include the CFDA number of the program that provided the funding for that amendment.

*Comment:* One commenter asked whether, in light of the new reporting requirements, a subrecipient would be subject to Federal audit requirements if it received $500,000 or more either from a single program or a combination of programs.

*Response:* The new reporting requirements under the Transparency Act do not change the audit requirements in OMB Circular A–133, section ____.200, that apply to a non-Federal entity that expends $500,000 or more in "federal awards" (which the Circular defines to include Federal financial assistance received indirectly through pass-through entities).

## III. Next Steps

Federal agencies that award Federal financial assistance subject to the Transparency Act will implement the interim final guidance in 2 CFR part 170 through their regulations, internal policy guidance to awarding offices, program announcements and application instructions, and the award term that now is in section Appendix A to part 170. The General Services Administration has recently published in the **Federal Register** with an opportunity for public comment the information collections that provide the specific data elements required for Transparency Act reporting of subawards and executive compensation [75 FR 43165]. The information collections will be modified as appropriate in response to public comments and published with any other operational guidelines before recipients begin reporting data on subawards.

### List of Subjects in 2 CFR Part 170

Business and industry, Colleges and universities, Cooperative agreements, Farmers, Federal aid programs, Grant programs, Grants administration, Hospitals, Indians, Insurance, International organizations, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements, State and local governments, Subsidies.

**Danny Werfel,**

*Controller.*

### Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR chapter I by adding part 170 to read as follows:

## PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

Sec.



**Authority:** Pub. L. 109–282; 31 U.S.C. 6102.

## Subpart A—General

### § 170.100 Purposes of this part.

This part provides guidance to agencies to establish requirements for recipients' reporting of information on subawards and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of Public Law 110–252, hereafter referred to as "the Transparency Act".

### § 170.105 Types of awards to which this part applies.

This part applies to an agency's grants, cooperative agreements, loans,

and other forms of Federal financial assistance subject to the Transparency Act, as defined in § 170.320.

**§ 170.110 Types of entities to which this part applies.**

(a) *General.* Through an agency's implementation of the guidance in this part, this part applies to all entities, other than those excepted in paragraph (b) of this section, that—

(1) Apply for or receive agency awards; or

(2) Receive subawards under those awards.

(b) *Exceptions.* (1) None of the requirements in this part apply to an individual who applies for or receives an award as a natural person (*i.e.,* unrelated to any business or non-profit organization he or she may own or operate in his or her name).

(2) None of the requirements regarding reporting names and total compensation of an entity's five most highly compensated executives apply unless in the entity's preceding fiscal year, it received—

(i) 80 percent or more of its annual gross revenue in Federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to the Transparency Act, as defined at § 170.320 (and subawards); and

(ii) $25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to the Transparency Act, as defined at § 170.320; and

(3) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

**§ 170.115 Deviations.**

Deviations from this part require the prior approval of the Office of Management and Budget (OMB).

## Subpart B—Policy

**§ 170.200 Requirements for program announcements, regulations, and application instructions.**

(a) Each agency that makes awards of Federal financial assistance subject to the Transparency Act must include the requirements described in paragraph (b) of this section in each program announcement, regulation, or other issuance containing instructions for applicants:

(1) Under which awards may be made that are subject to Transparency Act reporting requirements; and

(2) That either:

(i) Is issued on or after the effective date of this part; or

(ii) Has application or plan due dates after October 1, 2010.

(b) The program announcement, regulation, or other issuance must require each entity that applies and does not have an exception under § 170.110(b) to ensure they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding.

(c) Federal agencies that obtain post-award data on subaward obligations outside of this policy should take the necessary steps to ensure that their recipients are not required, due to the combination of agency-specific and Transparency Act reporting requirements, to submit the same or similar data multiple times during a given reporting period.

**§ 170.220 Award term.**

(a) To accomplish the purposes described in § 170.100, an agency must include the award term in Appendix A to this part in each award to a non-Federal entity under which the total funding will include $25,000 or more in Federal funding at any time during the project or program period.

(b) An agency—

(1) Consistent with paragraph (a) of this section, is not required to include the award term in Appendix A to this part if it determines that there is no possibility that the total amount of Federal funding under the award will equal or exceed $25,000. However, the agency must subsequently amend the award to add the award term if changes in circumstances increase the total Federal funding under the award to $25,000 or more during the project or program period.

## Subpart C—Definitions

**§ 170.300 Agency.**

*Agency* means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

**§ 170.305 Award.**

*Award,* for the purposes of this part, effective October 1, 2010, means a grant or cooperative agreement. On future dates to be specified by OMB in policy memoranda available at the OMB Web site, award also will include other types of awards of Federal financial assistance subject to the Transparency Act, as defined in § 170.320.

**§ 170.310 Entity.**

*Entity* has the meaning given in 2 CFR part 25.

**§ 170.315 Executive.**

*Executive* means officers, managing partners, or any other employees in management positions.

**§ 170.320 Federal financial assistance subject to the Transparency Act.**

*Federal financial assistance subject to the Transparency Act* means assistance that non-Federal entities described in § 170.105 receive or administer in the form of—

(a) Grants;

(b) Cooperative agreements (which does not include cooperative research and development agreements pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a));

(c) Loans;

(d) Loan guarantees;

(e) Subsidies;

(f) Insurance;

(g) Food commodities;

(h) Direct appropriations;

(i) Assessed and voluntary contributions; and

(j) Other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal funds.

(b) Does not include—

(1) Technical assistance, which provides services in lieu of money;

(2) A transfer of title to Federally owned property provided in lieu of money, even if the award is called a grant;

(3) Any classified award; or

(4) Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

**§ 170.325 Subaward.**

*Subaward* has the meaning given in paragraph e.3 of the award term in Appendix A to this part.

**170.330 Total compensation.**

*Total Compensation* has the meaning given in paragraph e.5 of the award term in Appendix A to this part.

## Appendix A to Part 170—Award Term

I. Reporting Subawards and Executive Compensation.

a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. You must report each obligating action described in paragraph a.1. of this award term to *http://www.fsrs.gov.*

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at *http://www.fsrs.gov specify.*

b. *Reporting Total Compensation of Recipient Executives.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. the total Federal funding authorized to date under this award is $25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at *http://www.ccr.gov.*

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. *Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.,* between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions*

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards,

and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. *Executive* means officers, managing partners, or any other employees in management positions.

3. *Subaward:*

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ____ .210 of the attachment to OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. *Subrecipient* means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. *Salary and bonus.*

ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

v. *Above-market earnings on deferred compensation which is not tax-qualified.*

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

[FR Doc. 2010–22705 Filed 9–13–10; 8:45 am]

**BILLING CODE 3110–01–P**

## OFFICE OF MANAGEMENT AND BUDGET

### 2 CFR Subtitle A, Chapter I, and Part 25

### Financial Assistance Use of Universal Identifier and Central Contractor Registration

**AGENCY:** Office of Federal Financial Management, Office of Management and Budget.

**ACTION:** Final guidance.

**SUMMARY:** OMB is issuing guidance to Federal agencies concerning two requirements for financial assistance applicants and recipients, and one requirement for first-tier subrecipients. An agency under the guidance must require applicants other than individuals, with some specific exceptions, to have Dun and Bradstreet Data Universal Numbering System (DUNS) numbers and maintain current registrations in the Central Contractor Registration (CCR) database. An agency must require applicants and recipients of grants and cooperative agreements to comply with the DUNS number and CCR requirements by October 1, 2010 and require applicants and recipients of all other financial assistance types to comply by October 1, 2011. The guidance provides standard wording for a new award term that each agency must

include in its financial assistance awards to require recipients to maintain current CCR registrations, which requires that they also have DUNS numbers. The guidance also specifies that each recipient may make subawards only to entities that have DUNS numbers.

**DATES:** Effective September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–7844.

**SUPPLEMENTARY INFORMATION:**

## I. Summary of Changes

On February 18, 2010 (75 FR 7316), OMB proposed a number of changes to title 2 of the Code of Federal Regulations (2 CFR). Some of the proposed changes were to provide new guidance to agencies that was needed to implement section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417, hereafter referred to as "section 872"), as that statute applies to grants. Some of the other proposed changes were to update guidance that existed elsewhere and relocate it in 2 CFR to provide needed context for the new guidance implementing section 872. The remaining changes were administrative in nature, to create seven subchapters in 2 CFR, Chapter I, as a better organizational framework for existing and future content in that chapter.

OMB now is finalizing some of those proposed changes, with the rest to follow separately. The substantive changes being finalized relate to the use of DUNS numbers and registration in the CCR. These changes are being finalized separately and expedited because they will enhance the quality of information available to the public when recipients begin on October 1, 2010 to report information on subawards, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended, hereafter referred to as "the Transparency Act"). OMB also is finalizing the administrative changes proposed in February 2010, by creating the new subchapters in 2 CFR, Chapter I.

## II. Relationship to Existing Requirements

The requirement for applicants to have DUNS numbers is not new. OMB established the DUNS requirement for applicants for grants or cooperative agreements in 2003. The policy was published in the **Federal Register** [68 FR 38402] and communicated to Federal agencies in OMB Memorandum M–03–16. The requirement was broadened to include applicants for other types of Federal financial assistance subject to the Transparency Act in 2008, in OMB Memorandum 08–19. Therefore, the sole effect of the guidance following this preamble is to relocate the requirement in the Code of Federal Regulations, in 2 CFR part 25.

There are several existing requirements concerning applicants' registration in the CCR. For example, an applicant must be registered in CCR if it wants to submit its applications electronically through Grants.gov. In another example, several providers of payment management services require that recipients be registered in CCR before receiving payments. As yet another example, OMB Memorandum M–09–10 required applicants for funding under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, hereafter referred to as "the Recovery Act") to register in CCR. The guidance following this preamble broadens the existing requirements to all other applicants for Federal financial assistance awards subject to the Transparency Act.

Similarly, the requirement for recipients to maintain their registration in the CCR throughout the period of performance under their awards is not entirely new. The final OMB guidance on reporting under the Recovery Act, OMB Memorandum M–09–21, requires recipients to register in CCR in order to access the FederalReporting.gov site at which they must report. That memorandum also allows a recipient to delegate some reporting responsibilities to its first-tier subrecipients, in which case those subrecipients must register in the CCR in order to report (a first-tier subrecipient is one that receives a subaward directly from the prime recipient, as distinct from a lower-tier subrecipient that receives a subaward from another subrecipient). For prime recipients, the guidance following this preamble broadens the existing Recovery Act requirement to recipients of other awards subject to the Transparency Act. Although the guidance proposed in February 2010 would have broadened the CCR requirement to first-tier subrecipients, the final guidance being adopted at this time does not require CCR registration for any subrecipients.

The standard award term that agencies must use to communicate the DUNS and CCR requirements to recipients is new. It will help ensure Government-wide uniformity, a benefit for recipients that receive awards from multiple agencies.

Applicants and recipients of grants and cooperative agreements must comply with the policy by October 1, 2010. Applicants and recipients of all other financial assistance types must comply by a date to be provided by the agency.

## III. Comments and Responses

We received comments on the proposed guidance in 2 CFR part 25 from three State agencies and three Federal agencies. We considered the comments in developing the final guidance, which closely parallels the proposed guidance. We made some changes based on the recommendations and others for clarity. The following paragraphs summarize the comments and our responses:

*Comment:* Three State agencies commented on the requirements for first-tier subrecipients in the award term in Appendix A to the proposed 2 CFR part 25. Two agencies cited burdens on subrecipients and the Transparency Act's definition of "Federal award" as reasons to exempt a subrecipient from the requirement to register in the CCR if the amount of the subaward is $25,000 or less. The third agency asked whether the prime recipient would be required to submit verification of subrecipients' compliance with the CCR requirement to the Federal agency and, if so, how frequently it would be required to do so. One of the agencies also recommended exempting subrecipients with awards of $25,000 or less from the requirement to obtain a DUNS number.

*Response:* Agree in part. We revised the final guidance so that there is no requirement at this time for any subrecipient to register in the CCR. Concerning the requirement for first-tier subrecipients to obtain a DUNS number, we did not adopt a $25,000 threshold. The DUNS number still is the only identifier with the advantages that led us to establish it in 2003 as the universal identifier for recipients of grants and cooperative agreements (*see* the preamble to 68 FR 38403, June 27, 2003). We do not agree that the one-time requirement to obtain a DUNS number is an undue hardship. We appreciate that first-tier subrecipients who are not also prime recipients of other Federal awards may need to adjust their procedures and systems initially to accommodate the DUNS number requirement, but we believe that the long-term benefits to transparency justify those changes.

*Comment:* Two Federal agencies commented on the definition of "award"

in section 25.305 of the proposed 2 CFR part 25. One agency questioned whether excluding technical assistance and transfers of Federally owned property from the definition could have the inadvertent effect of exempting them from the effects of suspension and debarment actions taken under 2 CFR part 180, in which the term "nonprocurement transaction" is defined in a way that would include them. The second agency suggested adding the words "for the purposes of this part" to the definition.

*Response:* Agree to add "for the purposes of this part" for added clarity, as the term "award" must be defined in each part of 2 CFR in a way that conforms to the purpose of that part. For example, the definitions of "award" in 2 CFR parts 182 and 225 differ significantly. Part 182 implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended) and defines "award" to include grants and cooperative agreements. The definition of "award" in 2 CFR part 225, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)," includes not only grants and other financial assistance awards but also cost reimbursement contracts, because that part specifies principles and standards for determining costs for that wider range of Federal funding instruments.

*Comment:* A Federal agency suggested that we delete paragraph 25.200(a)(2) in the proposed 2 CFR part 25 because it would be burdensome for an agency to modify every program announcement it already had issued under which it anticipated making awards after October 1, 2010. It further noted that the wording included some announcements under which applications already had been submitted.

*Response:* We disagree. We did not delete paragraph 25.200(a)(2), as suggested. We revised it to require agencies to notify potential applicants only in previously issued announcements that have due dates for applications or plans after October 1, 2010, and not all announcements under which awards would be made after that date. This does not change the fact that all new awards, as defined in the policy, after October 1, 2010 must reflect this reporting requirement. Providing potential applicants with more complete information about the requirements with which they will have to comply if their applications are successful is important, in order to enable them to make better informed decisions on whether to invest the time and expense in preparing applications. That benefit for potential applicants justifies the burdens on agencies associated with issuing amendments to the previously issued announcements.

**List of Subjects in 2 CFR Part 25**

Administrative practice and procedures, Grants administration, Grant programs, Loan programs.

**Danny Werfel,**

*Controller.*

**Authority and Issuance**

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR, subtitle A, as follows:

**SUBTITLE A**

## PARTS 2–99—[TRANSFERRED TO CHAPTER I]

■ 1. In subtitle A to title 2, parts 2 through 99, which are currently reserved, are transferred to chapter I.

■ 2. Subchapter A to chapter I, consisting of parts 2 through 19, is established and reserved to read as follows:

**Subchapter A—General Matters [Reserved]**

## PARTS 2–19—[RESERVED]

■ 3. Subchapter B to chapter I, consisting of parts 20 through 39, is established and added to read as follows:

**Subchapter B—Pre-Award Responsibilities**

## PARTS 20–24—[RESERVED]

## PART 25—UNIVERSAL IDENTIFIER AND CENTRAL CONTRACTOR REGISTRATION

Sec.



**Authority:** Pub. L. 109–282; 31 U.S.C. 6102.

### Subpart A–General

#### § 25.100 Purposes of this part.

This part provides guidance to agencies to establish:

(a) The Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as a universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients.

(b) The Central Contractor Registration (CCR) as the repository for standard information about applicants and recipients.

#### § 25.105 Types of awards to which this part applies.

This part applies to an agency's grants, cooperative agreements, loans, and other types of Federal financial assistance included in the definition of "award" in § 25.305. The requirements in this part must be implemented for grants and cooperative agreements by October 1, 2010. The requirements in this part must be implemented for all other award forms listed in § 25.200 requirement at a date to be specified in the future.

#### § 25.110 Types of recipient and subrecipient entities to which this part applies.

(a) *General.* Through an agency's implementation of the guidance in this part, this part applies to all entities, other than those exempted in paragraphs (b), (c), and (d) of this section, that—

(1) Apply for or receive agency awards; or

(2) Receive subawards directly from recipients of those agency awards.

(b) *Exemptions for individuals.* None of the requirements in this part apply to an individual who applies for or receives Federal financial assistance as a natural person (*i.e.,* unrelated to any business or non-profit organization he or she may own or operate in his or her name).

(c) *Exemptions for Federal agencies.* The requirement in this part to maintain a current registration in the CCR does not apply to an agency of the Federal

Government that receives an award from another agency.

(d) *Other exemptions.* (1) Under a condition identified in paragraph (d)(2) of this section, an agency may exempt an entity from an applicable requirement to obtain a DUNS number, register in the CCR, or both.

(i) In that case, the agency must use a generic DUNS number in data it reports to USASpending.gov if reporting for a prime award to the entity is required by the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, hereafter cited as "Transparency Act").

(ii) Agency use of a generic DUNS should be used rarely for prime award reporting because it prevents prime awardees from being able to fulfill the subward or executive compensation reporting required by the Transparency Act.

(2) The conditions under which an agency may exempt an entity are—

(i) For any entity, if the agency determines that it must protect information about the entity from disclosure, to avoid compromising classified information or national security or jeopardizing the personal safety of the entity's clients.

(ii) For a foreign entity applying for or receiving an award or subaward for a project or program performed outside the United States valued at less than $25,000, if the agency deems it to be impractical for the entity to comply with the requirement(s).

(3) Agencies' use of generic DUNS numbers, as described in paragraphs (d)(1) and (2) of this section, should be rare. Having a generic DUNS number limits a recipient's ability to use Governmentwide systems that are needed to comply with some reporting requirements.

#### § 25.115 Deviations.

Deviations from this part require the prior approval of the Office of Management and Budget (OMB).

### Subpart B—Policy

#### § 25.200 Requirements for program announcements, regulations, and application instructions.

(a) Each agency that awards types of Federal financial assistance included in the definition of "award" in § 25.305 must include the requirements described in paragraph (b) of this section in each program announcement, regulation, or other issuance containing instructions for applicants that either:

(1) Is issued on or after the effective date of this part; or

(2) Has application or plan due dates after October 1, 2010.

(b) The program announcement, regulation, or other issuance must require each entity that applies and does not have an exemption under § 25.110 to:

(1) Be registered in the CCR prior to submitting an application or plan;

(2) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency; and

(3) Provide its DUNS number in each application or plan it submits to the agency.

(c) For purposes of this policy:

(1) The applicant is the entity that meets the agency's or program's eligibility criteria and has the legal authority to apply and to receive the award. For example, if a consortium applies for an award to be made to the consortium as the recipient, the consortium must have a DUNS number. If a consortium is eligible to receive funding under an agency program but the agency's policy is to make the award to a lead entity for the consortium, the DUNS number of the lead entity will be used.

(2) A "program announcement" is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a "program announcement," "notice of funding availability," "broad agency announcement," "research announcement," "solicitation," or some other term.

(3) To remain registered in the CCR database after the initial registration, the applicant is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete.

#### § 25.205 Effect of noncompliance with a requirement to obtain a DUNS number or register in the CCR.

(a) An agency may not make an award to an entity until the entity has complied with the requirements described in § 25.200 to provide a valid DUNS number and maintain an active CCR registration with current information (other than any requirement that is not applicable because the entity is exempted under § 25.110).

(b) At the time an agency is ready to make an award, if the intended recipient has not complied with an applicable requirement to provide a DUNS number or maintain an active CCR registration with current information, the agency:

(1) May determine that the applicant is not qualified to receive an award; and

(2) May use that determination as a basis for making an award to another applicant.

#### § 25.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 25.200 and 25.205, an agency may add a DUNS number field to application forms or formats previously approved by OMB, without having to obtain further approval to add the field.

#### § 25.215 Requirements for agency information systems.

Each agency that makes awards (as defined in § 25.325) must ensure that systems processing information related to the awards, and other systems as appropriate, are able to accept and use the DUNS number as the universal identifier for financial assistance applicants and recipients.

#### § 25.220 Use of award term.

(a) To accomplish the purposes described in § 25.100, an agency must include in each award (as defined in § 25.305) the award term in Appendix A to this part.

(b) An agency may use different letters and numbers than those in Appendix A to this part to designate the paragraphs of the award term, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the agency's awards.

### Subpart C—Definitions

#### § 25.300 Agency.

*Agency* means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

#### § 25.305 Award.

(a) *Award,* for the purposes of this part, means an award of Federal financial assistance that a non-Federal entity described in § 25.110(a) receives or administers in the form of—

(1) A grant;

(2) A cooperative agreement (which does not include a cooperative research and development agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a));

(3) A loan;

(4) A loan guarantee;

(5) A subsidy;

(6) Insurance;

(7) Food commodities;

(8) A direct appropriation;

(9) Assessed or voluntary contributions; or

(10) Any other financial assistance transaction that authorizes the non-Federal entity's expenditure of Federal funds.

(b) An *Award* does not include:

(1) Technical assistance, which provides services in lieu of money; and

(2) A transfer of title to Federally owned property provided in lieu of money, even if the award is called a grant.

**§ 25.310 Central Contractor Registration (CCR).**

*Central Contractor Registration (CCR)* has the meaning given in paragraph C.1 of the award term in Appendix A to this part.

**§ 25.315 Data Universal Numbering System (DUNS) Number.**

*Data Universal Numbering System (DUNS) Number* has the meaning given in paragraph C.2 of the award term in Appendix A to this part.

**§ 25.320 Entity.**

*Entity,* as it is used in this part, has the meaning given in paragraph C.3 of the award term in Appendix A to this part.

**§ 25.325 For-profit organization.**

*For-profit organization* means a non-Federal entity organized for profit. It includes, but is not limited to:

(a) An "S corporation" incorporated under Subchapter S of the Internal Revenue Code;

(b) A corporation incorporated under another authority;

(c) A partnership;

(d) A limited liability corporation or partnership; and

(e) A sole proprietorship.

**§ 25.330 Foreign public entity.**

*Foreign public entity* means:

(a) A foreign government or foreign governmental entity;

(b) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);

(c) An entity owned (in whole or in part) or controlled by a foreign government; and

(d) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

**§ 25.335 Indian Tribe (or "Federally recognized Indian Tribe").**

*Indian Tribe* (or "*Federally recognized Indian Tribe*") means any Indian Tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*)) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**§ 25.340 Local government.**

*Local government* means a:

(a) County;

(b) Borough;

(c) Municipality;

(d) City;

(e) Town;

(f) Township;

(g) Parish;

(h) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(i) Special district;

(j) School district;

(k) Intrastate district;

(l) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

(m) Any other instrumentality of a local government.

**§ 25.345 Nonprofit organization.**

*Nonprofit organization*—

(a) Means any corporation, trust, association, cooperative, or other organization that—

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

(b) Includes nonprofit—

(1) Institutions of higher education;

(2) Hospitals; and

(3) Tribal organizations other than those included in the definition of "Indian Tribe."

**§ 25.350 State.**

*State* means—

(a) Any State of the United States;

(b) The District of Columbia;

(c) Any agency or instrumentality of a State other than a local government or State-controlled institution of higher education;

(d) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and

(e) The United States Virgin Islands, Guam, American Samoa, and a territory or possession of the United States.

**§ 25.355 Subaward.**

*Subaward* has the meaning given in paragraph C.4 of the award term in Appendix A to this part.

**§ 25.360 Subrecipient.**

*Subrecipient* has the meaning given in paragraph C.5 of the award term in Appendix A to this part.

## Appendix A to Part 25—Award Term

**I. Central Contractor Registration and Universal Identifier Requirements**

*A. Requirement for Central Contractor Registration (CCR)*

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

*B. Requirement for Data Universal Numbering System (DUNS) Numbers*

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

*C. Definitions*

For purposes of this award term:

1. *Central Contractor Registration (CCR)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at *http://www.ccr.gov*).

2. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866–705–5711) or the Internet (currently at *http://fedgov.dnb.com/webform*).

3. *Entity,* as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian Tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. *Subaward:*

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. ____.210 of the attachment to OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Subrecipient* means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

**PART 26–39—[RESERVED]**

■ 4. Subchapter C to chapter I, consisting of parts 40 through 59, is established and reserved to read as follows:

**Subchapter C—Award Content and Format [Reserved]**

**PARTS 40–59—[RESERVED]**

■ 5. Subchapter D to chapter I, consisting of parts 60 through 79, is established and added to read as follows:

**Subchapter D—Post-Award Responsibilities**

**PARTS 60–79—[RESERVED]**

■ 6. Subchapter E to chapter I, consisting of parts 80 through 99, is established and reserved to read as follows:

**Subchapter E—Cost Principles [Reserved]**

**PARTS 80–99—[RESERVED]**

■ 7. Subchapter F to chapter I, consisting of parts 100 through 119, is established and reserved to read as follows:

**Subchapter F—Audit Requirements [Reserved]**

**PARTS 100–119—[RESERVED]**

■ 8. Subchapter G to chapter I, consisting of parts 120 through 199, is established, and a new subchapter heading is added to read as follows:

**Subchapter G—National Policy Requirements**

[FR Doc. 2010–22706 Filed 9–13–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510, 520, and 558

**[Docket No. FDA–2010–N–0002]**

## Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of New Animal Drug Applications; Chloramphenicol; Lincomycin; Pyrantel Tartrate; and Tylosin Phosphate and Sulfamethazine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of four new animal drug applications (NADAs). In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of these NADAs.

**DATES:** This rule is effective September 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079; email: *john.bartkowiak@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** John J. Ferrante, 11 Fairway Lane, Trumbull, CT 06611; International Nutrition, Inc., 7706 "I" Plaza, Omaha, NE 68127; and Feed Service Co., Inc., 303 Lundin Blvd., P.O. Box 698, Mankato, MN 56001 have requested that FDA withdraw approval of the four NADAs listed in the following paragraph because they are no longer manufactured or marketed:

In a notice published elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADA 65–137, 121–337, 132–923, and 138–342, and all supplements and amendments thereto, is withdrawn, effective September 24, 2010. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these withdrawals of approval.

Following these changes of sponsorship, Feed Service Co., Inc., and John J. Ferrante are no longer the sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for these firms.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 520*

Animal drugs.

*21 CFR Part 558*

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 558 are amended as follows:

**PART 510—NEW ANIMAL DRUGS**

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

**510.600 [Amended]**

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entries for "Feed Service Co., Inc." and "John J. Ferrante"; and in the table in paragraph (c)(2), remove the entries for "030841" and "058034".

**PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS**

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 4. In § 520.390b, revise paragraph (b) to read as follows:

**§ 520.390b Chloramphenicol capsules.**

* * * * *

(b) *Sponsors.* See Nos. 000069 and 050057 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

* * * * *

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

■ 5. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

■ 6. In § 558.325, revise paragraphs (a) and (c)(3)(ii); and in the table in paragraphs (d)(2)(ii) and (d)(2)(iii), in the "Sponsor" column, remove "043733" to read as follows:

**§ 558.325 Lincomycin.**

(a) *Approvals.* Type A articles and Type B feeds approved for sponsors in § 510.600(c) of this chapter for specific uses as in paragraph (d) of this section as follows:

(1) No. 000009 for 20 and 50 grams per pound.

(2) No. 051311 for 2.5 and 8 grams per pound.

* * * * *

(c) * * *

(3) * * *

(ii) No. 051311:"CAUTION: Not to be fed to swine that weigh more than 250 lb."

* * * * *

**§ 558.485 [Amended]**

■ 7. In paragraph (b)(3) of § 558.485, remove "043733".

**§ 558.630 [Amended]**

■ 8. In paragraph (b)(5) of § 558.630, remove "030841".

Dated: September 1, 2010.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 2010–22808 Filed 9–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9497]**

**RIN 1545–BI97**

## Guidance Regarding Deferred Discharge of Indebtedness Income of Corporations and Deferred Original Issue Discount Deductions; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains correcting amends to temporary regulations under section 108(i) of the Internal Revenue Code. These regulations primarily affect C corporations regarding the acceleration of deferred discharge of indebtedness (COD) income (deferred COD income) and deferred original issue discount (OID) deductions (deferred OID deductions) under section 108(i)(5)(D), and the calculation of earnings and profits as a result of an election under section 108(i). These errors were made when the agency published temporary regulations (TD 9497) in the **Federal Register** on Friday, August 13, 2010 (75 FR 49394).

**DATES:** This correction is effective on September 14, 2010, and is applicable on August 13, 2010.

**FOR FURTHER INFORMATION CONTACT:** Concerning the acceleration rules for deferred COD income and deferred OID deductions, and the rules for earnings and profits, Robert M. Rhyne at (202) 622–7790; and concerning the rules for deferred OID deductions, Rubin B. Ranat at (202) 622–7530 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

The temporary regulations (TD 9497) that are the subject of this document are under section 108 of the Internal Revenue Code.

### Need for Correction

As published, the temporary regulations (TD 9497) contain errors that may prove to be misleading and are in need of clarification.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *.

■ **Par. 2.** Section 1.108(i)–1T is amended by revising the fifth sentence of paragraph (b)(2)(iii)(A) and the fifth sentence of paragraph (b)(2)(iii)(D) to read as follows:

**§ 1.108(i)–1T Deferred discharge of indebtedness income and deferred original issue discount deductions of C corporations (temporary).**

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) * * * For purposes of determining an electing corporation's gross asset value, the amount of any distribution that is not treated as an impairment transaction under paragraph (b)(2)(iii)(D) of this section (distributions and charitable contributions consistent with historical practice) or under paragraph (b)(2)(iii)(E) of this section (special rules for RICs and REITs) is treated as an asset of the electing corporation. * * *

* * * * *

(D) * * * If an electing corporation has been in existence for less than three years, the period during which the electing corporation has been in existence is substituted for the preceding three taxable years. * * *

* * * * *

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2010–22792 Filed 9–13–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2010–0672]**

## Notice of Enforcement for Special Local Regulation; Thunderboat Regatta; Mission Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Thunderboat Regatta Special Local Regulation from 7 a.m. PST on September 17, 2010 through 5:30 p.m. on September 19, 2010. This action is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. During the enforcement period, no person or vessel may enter the zone established by the special local regulation without permission of the Captain of the Port.

**DATES:** The regulations in 33 CFR 100.1101 will be enforced from 7 a.m. to 5:30 p.m. on September 17, 18, and 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Shane.E.Jackson@USCG.mil.*

**SUPPLEMENTARY INFORMATION:**

The Coast Guard will enforce the special local regulation for the Thunderboat Regatta in 33 CFR 100.1101 on September 17, 2010, from 7 a.m. PST to 5:30 p.m., September 18, 2010, from 7 a.m. PST to 5:30 p.m., and September 19, 2010, from 7 a.m. PST to 5:30 p.m.

Under the provisions of 33 CFR 100.1101, a vessel may not enter the regulated area, unless it receives

permission from the COTP. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1101(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers. If the COTP or his designated representative determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: August 26, 2010.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2010–22798 Filed 9–13–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Parts 3000, 3910, and 3930

**[L13100000 PP0000 LLWO310000; L1990000 PO0000 LLWO320000]**

**RIN 1004–AE18**

## Minerals Management: Adjustment of Cost Recovery Fees

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Bureau of Land Management (BLM) mineral resources regulations to update some fees that cover the BLM's cost of processing certain documents relating to its mineral programs and some filing fees for mineral-related documents. These updates include fees for actions such as lease renewals and mineral patent adjudications. This rule also moves the oil shale cost recovery fee amounts from the rule text to the general cost recovery fee table so that mineral cost recovery fees can be found in one location.

**DATES:** This final rule is effective October 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Steve Salzman, Chief, Division of Fluid Minerals, (202) 912–7143, or Faith Bremner, Regulatory Affairs Analyst, (202) 912–7441. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

**ADDRESSES:** You may send inquiries or suggestions to Director (630), Bureau of Land Management, MS–LS 401, 1849 C Street, NW., Washington, DC 20240; Attention: RIN 1004–AE18.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising certain fees and service charges, and establishing the method it would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in Subchapter C according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP), which is published quarterly by the U.S. Department of Commerce. *See also* 43 CFR 3000.10. Because the fee recalculations are simply based on a mathematical formula, we have changed the fees in this final rule without providing opportunity for notice and comment. This final rule will allow the BLM to update these fees and service charges by October 1 of this year, as required by the 2005 regulation. The public had an opportunity to comment on this procedure during the comment period on the original cost recovery rule, and this new rule simply administers the procedure set forth in those regulations. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the rule may be effective less than 30 days after publication.

### II. Discussion of Final Rule

The BLM publishes a fee update rule each year, which becomes effective on October 1 of that year. The fee updates are based on the IPD–GDP for the 4th Quarter of the preceding calendar year. The BLM's most recent fee update rule became effective on October 1, 2009, 74 FR 49330 (Sept. 28, 2009), based on the IPD–GDP for the 4th Quarter of 2008. This fee update rule is based on the IPD–GDP for the 4th Quarter of 2009, thus reflecting the rate of inflation over the four calendar quarters since the 4th Quarter of 2008.

The fee is calculated by applying the IPD–GDP to the base value from the previous year's rule. This results in an updated base value. This updated base value is then rounded to the closest multiple of $5, or to the nearest cent for fees under $1, to establish the new fee.

Under this rule, 44 fees will remain the same, and 4 fees will increase, as follows:

(A) The Geothermal Program's lands nomination fee will increase from plus 10 cents per acre to plus 11 cents per acre;

(B) The Solid Minerals (other than Coal and Oil Shale) Program's lease renewal fee will increase from $480 to $485;

(C) The Mining Law Administration Program's fee for mineral patent adjudication of more than 10 claims will increase from $2,820 to $2,840; and

(D) The Mining Law Administration Program's fee for mineral patent adjudication of 10 or fewer claims will increase from $1,410 to $1,420.

In this rule we also moved the cost recovery fees for the oil shale program into the Processing and Filing Fee Table at 43 CFR 3000.12. We added a reference to the f ee table in the relevant sections of the rule text at 43 CFR sections 3910.31, 3933.20, and 3933.31. This is an administrative revision for the convenience of the reader and has no substantive effect.

The calculations that resulted in the new fees are included in the table below.

FIXED COST RECOVERY FEES FY11

| Document/Action | Existing fee [1] | Existing value [2] | IPD–GDP increase [3] | New value [4] | New fee [5] |
|---|---|---|---|---|---|
| **Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)** | | | | | |
| Noncompetitive lease application | $ 375 | $ 374.68 | $ 2.55 | $ 377.23 | $ 375 |
| Competitive lease application | 145 | 145.40 | 0.99 | 146.39 | 145 |
| Assignment and transfer of record title or operating rights | 85 | 83.88 | 0.57 | 84.45 | 85 |
| Overriding royalty transfer, payment out of production | 10 | 11.18 | 0.08 | 11.26 | 10 |
| Name change, corporate merger or transfer to heir/devisee | 195 | 195.72 | 1.33 | 197.05 | 195 |
| Lease consolidation | 415 | 413.82 | 2.81 | 416.63 | 415 |
| Lease renewal or exchange | 375 | 374.68 | 2.55 | 377.23 | 375 |
| Lease reinstatement, Class I | 75 | 72.69 | 0.49 | 73.18 | 75 |
| Leasing under right-of-way | 375 | 374.68 | 2.55 | 377.23 | 375 |
| Geophysical exploration permit application—Alaska | 25 | | | | 25 [6] |
| Renewal of exploration permit—Alaska | 25 | | | | 25 [7] |
| **Geothermal (part 3200)** | | | | | |
| Noncompetitive lease application | 375 | 374.68 | 2.55 | 377.23 | 375 |
| Competitive lease application | 145 | 145.40 | 0.99 | 146.39 | 145 |
| Assignment and transfer of record title or operating rights | 85 | 83.88 | 0.57 | 84.45 | 85 |
| Name change, corporate merger or transfer to heir/devisee | 195 | 195.72 | 1.33 | 197.05 | 195 |
| Lease consolidation | 415 | 413.82 | 2.81 | 416.63 | 415 |
| Lease reinstatement | 75 | 72.69 | 0.49 | 73.18 | 75 |
| Nomination of lands | 105 | 104.69 | 0.71 | 105.40 | 105 |
| plus per acre nomination fee | 0.10 | 0.10469 | 0.00071 | 0.10540 | 0.11 |
| Site license application | 55 | 55.92 | 0.38 | 56.30 | 55 |
| Assignment or transfer of site license | 55 | 55.92 | 0.38 | 56.30 | 55 |
| **Coal (parts 3400, 3470)** | | | | | |
| License to mine application | 10 | 11.18 | 0.08 | 11.26 | 10 |
| Exploration license application | 310 | 307.57 | 2.09 | 309.66 | 310 |
| Lease or lease interest transfer | 60 | 61.52 | 0.42 | 61.94 | 60 |
| **Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)** | | | | | |
| Applications other than those listed below | 35 | 33.55 | 0.23 | 33.78 | 35 |
| Prospecting permit application amendment | 60 | 61.52 | 0.42 | 61.94 | 60 |
| Extension of prospecting permit | 100 | 100.66 | 0.68 | 101.34 | 100 |
| Lease modification or fringe acreage lease | 30 | 27.97 | 0.19 | 28.16 | 30 |
| Lease renewal | 480 | 480.93 | 3.27 | 484.20 | 485 |
| Assignment, sublease, or transfer of operating rights | 30 | 27.97 | 0.19 | 28.16 | 30 |
| Transfer of overriding royalty | 30 | 27.97 | 0.19 | 28.16 | 30 |
| Use permit | 30 | 27.97 | 0.19 | 28.16 | 30 |
| Shasta and Trinity hardrock mineral lease | 30 | 27.97 | 0.19 | 28.16 | 30 |
| Renewal of existing sand and gravel lease in Nevada | 30 | 27.97 | 0.19 | 28.16 | 30 |
| **Multiple Use; Mining (part 3700)** | | | | | |
| Notice of protest of placer mining operations | 10 | 11.18 | 0.08 | 11.26 | 10 |
| **Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)** | | | | | |
| Application to open lands to location | 10 | 11.18 | 0.08 | 11.26 | 10 |
| Notice of location | 15 | 16.77 | 0.11 | 16.88 | 15 |
| Amendment of location | 10 | 11.18 | 0.08 | 11.26 | 10 |
| Transfer of mining claim/site | 10 | 11.18 | 0.08 | 11.26 | 10 |
| Recording an annual FLPMA filing | 10 | 11.18 | 0.08 | 11.26 | 10 |
| Deferment of assessment work | 100 | 100.66 | 0.68 | 101.34 | 100 |
| Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands | 30 | 27.97 | 0.19 | 28.16 | 30 |
| Mineral patent adjudication: | | | | | |
| (more than 10 claims) | 2,820 | 2,818.47 | 19.17 | 2,837.64 | 2,840 |
| (10 or fewer claims) | 1,410 | 1,409.23 | 9.58 | 1,418.81 | 1,420 |
| Adverse claim | 100 | 100.66 | 0.68 | 101.34 | 100 |
| Protest | 60 | 61.52 | 0.42 | 61.94 | 60 |
| **Oil Shale Management (parts 3900, 3910, 3930)** | | | | | |
| Exploration license application | 295 | 295 | 2.01 | 297.01 | 295 |

FIXED COST RECOVERY FEES FY11—Continued

| Document/Action | Existing fee [1] | Existing value [2] | IPD–GDP increase [3] | New value [4] | New fee [5] |
|---|---|---|---|---|---|
| Application for assignment or sublease of record title or overriding royalty | 60 | 60 | 0.41 | 60.41 | 60 |

Source for Implicit Price Deflator for Gross Domestic Product data: U.S. Department of Commerce, Bureau of Economic Analysis.

[1] The Existing Fee was established by the 2009 (Fiscal Year 2010) cost recovery fee update rule published September 28, 2009 (74 FR 49330), effective October 1, 2009.

[2] The Existing Value is the figure from the New Value column in the previous year's rule. In the case of fees that were not in the table the previous year, or that had no figure in the New Value column the previous year, the Existing Value is the same as the Existing Fee.

[3] From 4th Quarter 2008 to 4th Quarter 2009, the IPD–GDP increased by 0.68 percent. The value in the IPD–GDP Increase column is 0.68 percent of the Existing Value.

[4] The sum of the Existing Value and the IPD–GDP Increase is the New Value.

[5] The New Fee for 2011 is the New Value rounded to the nearest $5 for values equal to or greater than $1, or to the nearest penny for values under $1.

[6] Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) directed in subsection (i) that "the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations." In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854—58855. While the $25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, we interpret the provision quoted as prohibiting us from increasing this $25 fee.

[7] We interpret the Energy Policy Act prohibition discussed in footnote 6, above, as prohibiting us from increasing this $25 fee, as well.

## III. How Fees Are Adjusted

Each year, the figures in the Existing Value column in the table above, not those in the Existing Fee column, are used as the basis for calculating the adjustment to these fees. The Existing Value is the figure from the New Value column in the previous year's rule. In the case of fees that were not in the table the previous year, or that had no figure in the New Value column the previous year, the Existing Value is the same as the Existing Fee. Because in setting the fees, values are rounded to the nearest $5, or the nearest penny for fees under $1, adjustments based on the figures in the Existing Fee column would lead to significantly over-or-under-valued fees over time. Fee adjustments are made by multiplying the annual change in the IPD–GDP by the figure in the Existing Value column. This calculation defines a new value for this year, which is then rounded to the nearest $5, or the nearest penny for fees under $1, to establish the new fee.

## IV. Procedural Matters

*Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The BLM has determined that the rule will not have an annual effect on the economy of $100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The changes in today's rule are much smaller than those in the 2005 final rule, which did not approach the threshold in Executive Order 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section, above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule does apply an inflation factor that increases a handful of existing user fees for processing documents associated with the onshore minerals programs. However, most of these fee increases are less than 1 percent and none of the increases materially affects the budgetary impact of user fees.

Finally, this rule will not raise novel legal issues. As explained above, this rule simply implements an annual process to account for inflation that was proposed and explained in the 2005 cost recovery rule.

*The Regulatory Flexibility Act*

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining. A coal lessee is a small entity if it employs not more than 250 people, including people working for its affiliates.

The SBA would consider many, if not most, of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of "small entity."

The final rule will not affect a large number of small entities since only four fees for activities on public lands will be increased. We have concluded that the effects will not be significant. Only 4 out of 48 fees will be adjusted upward, and most of the fixed fee increases will be less than 1 percent as a result of this final rule. For the 2005 final rule, the BLM completed a threshold analysis which is available for public review in the administrative record for that rule. (For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section, above.) The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

*The Small Business Regulatory Enforcement Fairness Act*

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than $100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. For the 2005 final rule, which established the fee adjustment procedure that this rule implements, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

*Executive Order 13132, Federalism*

This final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, therefore, we find that the final rule does not have significant federalism effects. A federalism assessment is not required.

*The Paperwork Reduction Act of 1995*

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the BLM submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. The OMB approved the information collection requirements under the following Control Numbers:

Oil and Gas

(1) 1004–0034 which expires July 31, 2012;

(2) 1004–0137 which expires September 30, 2010, renewal pending;

(3) 1004–0162 which expires May 31, 2012;

(4) 1004–0185 which expires November 30, 2012;

Geothermal

(5) 1004–0132 which expires September 30, 2010, renewal pending;

Coal

(6) 1004–0073 which expires June 30, 2013;

Mining Claims

(7) 1004–0025 which expires March 31, 2013;

(8) 1004–0114 which expires August 31, 2013; and

Leasing of Solid Minerals Other Than Oil Shale

(9) 1004–0121 which expires February 28, 2013.

*Takings Implication Assessment (Executive Order 12630)*

As required by Executive Order 12630, the Department of the Interior has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates service fees. The Department therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

*Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

*The National Environmental Policy Act (NEPA)*

The BLM has determined that this final rule is administrative and involves only procedural changes addressing fee requirements. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215.

Pursuant to Council on Environmental Quality regulation (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means categories of actions which do not individually or cumulatively have a significant effect on the human environment and which have been determined to have no such effect on procedures adopted by a Federal agency, and therefore require neither an environmental assessment nor an environmental impact statement.

*The Unfunded Mandates Reform Act of 1995*

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* because it will not result in State, local, private sector, or Tribal government expenditures of $100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

*Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have Tribal implications. A key factor is whether the rule would have substantial direct effects on one or more Indian Tribes. The BLM has not found any substantial direct effects. Consequently, the BLM did not utilize the consultation process set forth in Section 5 of the Executive Order.

*Information Quality Act*

In developing this rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

*Effects on the Nation's Energy Supply (Executive Order 13211)*

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this final rule. It merely adjusts certain administrative cost recovery fees to account for inflation.

*Author*

The principal author of this rule is Faith Bremner of the Division of Regulatory Affairs, Bureau of Land Management.

**List of Subjects**

*43 CFR Part 3000*

Public lands—mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3910*

Environmental protection, Exploration licenses, Intergovernmental relations, Oil shale reserves, Public lands—mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3930*

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil shale reserves, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

**Ned Farquhar,**

*Deputy Assistant Secretary, Land and Minerals Management.*

■ For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR Chapter II as follows:

## PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

**Authority:** 16 U.S.C. 3101 *et seq.;* 30 U.S.C. 181 *et seq.,* 301–306, 351–359, and 601 *et seq.;* 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.;* 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.;* and Pub. L. 97–35, 95 Stat. 357.

### Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) and the table following paragraph (b) to read as follows:

**§ 3000.12 What is the fee schedule for fixed fees?**

(a) The table in this section shows the fixed fees that you must pay to BLM for the services listed for Fiscal Year 2011. These fees are nonrefundable and must be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register**, and will subsequently be posted on the BLM Web site (*http://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

* * * * *

(b) * * *

FY 2011 PROCESSING AND FILING FEE TABLE

| Document/action | FY 2011 fee |
|---|---|
| **Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)** | |
| Noncompetitive lease application | $375 |
| Competitive lease application | 145 |
| Assignment and transfer of record title or operating rights | 85 |
| Overriding royalty transfer, payment out of production | 10 |
| Name change, corporate merger or transfer to heir/devisee | 195 |
| Lease consolidation | 415 |
| Lease renewal or exchange | 375 |
| Lease reinstatement, Class I | 75 |
| Leasing under right-of-way | 375 |
| Geophysical exploration permit application—Alaska | 25 |
| Renewal of exploration permit—Alaska | 25 |
| **Geothermal (part 3200)** | |
| Noncompetitive lease application | 375 |
| Competitive lease application | 145 |
| Assignment and transfer of record title or operating rights | 85 |
| Name change, corporate merger or transfer to heir/devisee | 195 |
| Lease consolidation | 415 |
| Lease reinstatement | 75 |
| Nomination of lands | 105 |
| plus per acre nomination fee | 0.11 |
| Site license application | 55 |
| Assignment or transfer of site license | 55 |
| **Coal (parts 3400, 3470)** | |
| License to mine application | 10 |
| Exploration license application | 310 |
| Lease or lease interest transfer | 60 |
| **Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)** | |
| Applications other than those listed below | 35 |
| Prospecting permit application amendment | 60 |
| Extension of prospecting permit | 100 |
| Lease modification or fringe acreage lease | 30 |
| Lease renewal | 485 |
| Assignment, sublease, or transfer of operating rights | 30 |
| Transfer of overriding royalty | 30 |
| Use permit | 30 |
| Shasta and Trinity hardrock mineral lease | 30 |
| Renewal of existing sand and gravel lease in Nevada | 30 |
| **Multiple Use; Mining (part 3730)** | |
| Notice of protest of placer mining operations | 10 |

FY 2011 PROCESSING AND FILING FEE TABLE—Continued

| Document/action | FY 2011 fee |
|---|---|
| **Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)** | |
| Application to open lands to location | 10 |
| Notice of location * | 15 |
| Amendment of location | 10 |
| Transfer of mining claim/site | 10 |
| Recording an annual FLPMA filing | 10 |
| Deferment of assessment work | 100 |
| Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands | 30 |
| Mineral patent adjudication | 2,840 (more than 10 claims)<br>1,420 (10 or fewer claims) |
| Adverse claim | 100 |
| Protest | 60 |
| **Oil Shale Management (parts 3900, 3910, 3930)** | |
| Exploration license application | 295 |
| Application for assignment or sublease of record title or overriding royalty | 60 |

* To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. 43 CFR part 3833.

## PART 3910—OIL SHALE EXPLORATION LICENSES

■ 3. The authority citation for part 3910 continues to read as follows:

**Authority:** 25 U.S.C. 396(d) and 2107, 30 U.S.C. 241(a), 42 U.S.C. 15927, 43 U.S.C. 1732(b) and 1740.

### Subpart 3910—Exploration Licenses

■ 4. Amend § 3910.31 by revising paragraph (b)(2) to read as follows:

**§ 3910.31 Filing of an application for an exploration license.**

* * * * *

(b) * * *

(2) The filing fee for an exploration license application found in the fee schedule in § 3000.12 of this chapter;

* * * * *

## PART 3930—MANAGEMENT OF OIL SHALE EXPLORATION AND LEASES

■ 5. The authority citation for part 3930 continues to read as follows:

**Authority:** 25 U.S.C. 396d and 2107, 30 U.S.C. 241(a), 42 U.S.C. 15927, 43 U.S.C. 1732(b), 1733, and 1740.

### Subpart 3933—Assignments and Subleases

■ 6. Amend § 3933.20 by revising the first sentence of the section to read as follows:

**§ 3933.20 Filing fees.**

Each application for assignment or sublease of record title or overriding royalty must include the filing fee found in the fee schedule in § 3000.12 of this chapter. * * *

■ 7. Amend § 3933.31 by revising paragraph (b)(3) to read as follows:

**§ 3933.31 Record title assignments.**

* * * * *

(b) * * *

(3) The filing fee found in the fee schedule in § 3000.12 of this chapter.

* * * * *

[FR Doc. 2010–22885 Filed 9–13–10; 8:45 am]

BILLING CODE 4310–84–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 64

**[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8149]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES:** *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will

be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This rule meets the applicable standards of Executive Order 12988.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region V** | | | | |
| Wisconsin: | | | | |
| Gillett, City of, Oconto County | 550295 | September 30, 1975, Emerg; February 1, 1984, Reg; October 6, 2010, Susp. | October 6, 2010 | October 6, 2010 |
| Lena, Village of, Oconto County | 550296 | July 7, 1975, Emerg; September 18, 1985, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Oconto, City of, Oconto County | 550297 | September 17, 1973, Emerg; August 3, 1981, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Oconto County, Unincorporated Areas | 550294 | May 21, 1973, Emerg; January 6, 1983, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Oconto Falls, City of, Oconto County | 550298 | June 23, 1975, Emerg; July 16, 1981, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Pulaski, Village of, Brown, Oconto, and Shawano Counties. | 550024 | February 27, 1976, Emerg; August 3, 1981, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Suring, Village of, Oconto County | 550300 | January 30, 1975, Emerg; December 1, 1983, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| **Region VI** | | | | |
| Arkansas: | | | | |
| Elaine, City of, Phillips County | 050167 | March 29, 1974, Emerg; September 4, 1985, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Helena-West Helena, City of, Phillips County. | 050168 | February 15, 1974, Emerg; July 16, 1979, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Lake View, City of, Phillips County | 050169 | July 23, 1976, Emerg; February 1, 1987, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Marvell, City of, Phillips County | 050170 | July 28, 1993, Emerg; August 1, 2008, Reg; October 6, 2010, Susp. | .....do ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Phillips County, Unincorporated Areas. | 050166 | April 28, 1981, Emerg; April 1, 1988, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| New Mexico: | | | | |
| Portales, City of, Roosevelt County ..... | 350054 | October 29, 1974, Emerg; January 20, 1982, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Red River, Town of, Taos County ..... | 350079 | April 18, 1975, Emerg; July 1, 1987, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Taos, Town of, Taos County. ..... | 350080 | August 25, 1975, Emerg; August 4, 1987, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Taos County, Unincorporated Areas ..... | 350078 | September 25, 1975, Emerg; January 5, 1989, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Texas: | | | | |
| Big Spring, City of, Howard County ..... | 480360 | February 7, 1975, Emerg; September 30, 1981, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Brooks County, Unincorporated Areas .. | 481196 | July 21, 1975, Emerg; July 1, 1987, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Coahoma, City of, Howard County ..... | 481099 | September 13, 2007, Emerg; October 6, 2010, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Falfurrias, City of, Brooks County ..... | 480086 | March 21, 1975, Emerg; August 17, 1981, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Howard County, Unincorporated Areas | 481227 | June 3, 1982, Emerg; February 1, 1988, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Kountze, City of, Hardin County ..... | 480845 | February 27, 1987, Emerg; November 1, 1989, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Lumberton, City of, Hardin County ..... | 481111 | May 8, 1979, Emerg; May 8, 1979, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Rose Hill Acres, City of, Hardin County | 480846 | March 8, 1974, Emerg; April 15, 1977, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Silsbee, City of, Hardin County ..... | 480285 | June 7, 1974, Emerg; May 1, 1978, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Sour Lake, City of, Hardin County ..... | 480286 | June 3, 1974, Emerg; October 28, 1977, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| **Region VII** | | | | |
| Iowa: | | | | |
| Earlham, City of, Madison County ..... | 190570 | September 6, 1977, Emerg; September 30, 1988, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| East Peru, City of, Madison County ..... | 190450 | April 25, 1977, Emerg; February 1, 1987, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Madison County, Unincorporated Areas | 190887 | September 10, 1993, Emerg; September 1, 1996, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Patterson, City of, Madison County ..... | 190451 | March 27, 1979, Emerg; January 1, 1987, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Winterset, City of, Madison County ..... | 190944 | April 24, 1992, Emerg; May 3, 1993, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Kansas: Harvey County, Unincorporated Areas. | 200585 | October 19, 1978, Emerg; August 15, 1983, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Newton, City of, Harvey County ..... | 200133 | September 13, 1974, Emerg; October 2, 1979, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| North Newton, City of, Harvey County .. | 200542 | June 28, 1979, Emerg; June 28, 1979, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| **Region VIII** | | | | |
| Utah: | | | | |
| Uintah County, Unincorporated Areas .. | 490147 | November 30, 1977, Emerg; February 1, 1986, Reg; October 6, 2010, Susp. | .....do ..... | Do. |
| Vernal, City of, Uintah County ..... | 490149 | April 16, 1975, Emerg; March 18, 1986, Reg; October 6, 2010, Susp. | .....do ..... | Do. |

*-do- =Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: September 3, 2010.

**Edward L. Connor,**

*Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2010–22796 Filed 9–13–10; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R3–ES–2010–0068; 92220–1113–0000–B3]**

**RIN 1018–AX28**

## Endangered and Threatened Wildlife and Plants; Technical Corrections for Three Midwest Region Plant Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Direct final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the revised taxonomy of *Lesquerella filiformis* (Missouri bladderpod), *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot), and *Mimulus glabratus* var. *michiganensis* (Michigan monkey-flower) under the Endangered Species Act of 1973, as amended (Act). We are revising the List of Endangered and Threatened Plants to reflect the current scientifically accepted taxonomy and nomenclature of these species. We revise the scientific names of these species as follows: *Physaria filiformis (=Lesquerella f.), Rhodiola integrifolia ssp. leedyi (=Sedum integrifolium ssp. l.), and Mimulus michiganensis (=M. glabratus var. michiganensis),* respectively.

**DATES:** This rule is effective December 13, 2010, without further action, unless significant adverse comment is received by October 14, 2010. If significant adverse comment is received, we will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R3–ES–2010–0068.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R3–ES–2010–0068; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

*See* **Public Comments** in **SUPPLEMENTARY INFORMATION** for more information about submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Carlita Payne, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Midwest Regional Office, Division of Endangered Species, 1 Federal Drive, Fort Snelling, MN 55111–4056; telephone 612–713–5350. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY (telephone typewriter or teletypewriter) assistance 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

### Purpose of Direct Final Rule and Final Action

The purpose of this direct final rule is to notify the public that we are revising the List of Endangered and Threatened Plants to reflect the scientifically accepted taxonomy and nomenclature of three plant species listed under section 4 of the Act (16 U.S.C. 1531 *et seq.*). These changes to the List of Endangered and Threatened Plants (50 CFR 17.12(h)) reflect the most recently accepted scientific names in accordance with 50 CFR 17.12(b).

We are publishing this rule without a prior proposal because this is a noncontroversial action that does not alter the regulatory protections afforded to these species, and therefore, in the best interest of the public, should be undertaken in as timely a manner as possible. This rule will be effective, as published in this document, on the effective date specified in the **DATES** section, unless we receive significant adverse comments on or before the comment due date specified in the **DATES** section of this document. Significant adverse comments are comments that provide strong justifications as to why this rule should not be adopted or why it should be changed.

If we receive significant adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date, and we will engage in the normal rulemaking process to promulgate these changes to 50 CFR 17.12.

Elsewhere in today's issue of the **Federal Register**, we have published a notice to initiate 5-year reviews that includes *Physaria filiformis* among six other Midwest species. We will give the same consideration to comments in regard to the taxonomy of Missouri bladderpod submitted in response to either this direct final rule or our notice to initiate 5-year reviews; you do not need to submit separate comments pertaining to this issue for both documents.

### Public Comments

You may submit your comments and materials regarding this direct final rule by one of the methods listed in the **ADDRESSES** section. Please include sufficient information with your comments that allows us to verify any scientific or commercial information you include. We will not consider comments sent by e-mail or fax, or to an address not listed in the **ADDRESSES** section.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us. Before including your address, phone number, e-mail address, or other personal information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this direct final rule, will be available for public inspection on the Internet at *http://www.regulations.gov* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service Midwest Regional Office (*see* **FOR FURTHER INFORMATION CONTACT**). Please note that comments posted to *http://www.regulations.gov* are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission. Information regarding this rule is available in alternative formats upon request (*see* **FOR FURTHER INFORMATION CONTACT**). For information pertaining to specific species, please contact the following Ecological Services Field Offices:

| Species | Contact Person, Phone, E-mail | Contact Address |
|---|---|---|
| *Physaria filiformis* (=*Lesquerella f.*) | Charlie Scott, Field Supervisor, or Paul McKenzie, Endangered Species Coordinator; (573) 234–2132, extension 107, *paul_mckenzie@fws.gov*. | Columbia Missouri Field Office, U.S. Fish and Wildlife Service, 101 Park DeVille Drive, Suite A, Columbia, MO 65203–0057. |
| *Rhodiola integrifolia* ssp. leedyi (=*Sedum integrifolium* ssp. l.). | Tony Sullins, Field Supervisor, or Phil Delphey, Endangered Species Coordinator; (612) 725–3548, *phil_delphey@fws.gov*. | Twin Cities Field Office, U.S. Fish and Wildlife Service, 1401 American Boulevard E., Bloomington, MN 55425–1665. |
| *Mimulus michiganensis* (=*M. glabratus* var. *michiganensis*). | Acting Field Supervisor, or Tameka Dandridge, Biologist; (517) 351–8315, *tameka_dandridge@fws.gov*. | East Lansing Field Office, U.S. Fish and Wildlife Service, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823–5902. |

**Background**

Section 17.12(b) of title 50 of the Code of Federal Regulations (CFR) requires us to use the most recently accepted scientific name of any plant species that we have determined to be an endangered or threatened species. Using the best available scientific information, this direct final rule documents taxonomic changes of the scientific names to three entries on the List of Endangered and Threatened Plants (50 CFR 17.12(h)). The basis for the taxonomic changes is supported by published studies in peer-reviewed journals. We revise the scientific names of these species under section 4 of the Act (16 U.S.C. 1531 *et seq.*) as follows: *Physaria filiformis* (=*Lesquerella f.*) (Missouri bladderpod), *Rhodiola integrifolia* ssp. *leedyi* (=*Sedum integrifolium* ssp. l.) (Leedy's roseroot), and *Mimulus michiganensis* (=*M. glabratus* var. *michiganensis*) (Michigan monkey-flower). We make these changes to the List of Endangered and Threatened Plants (50 CFR 17.12(h)) to reflect the most recently accepted scientific names in accordance with 50 CFR 17.12(b).

**Taxonomic Classification**

*Physaria filiformis*

The scientific name change of *Physaria filiformis* (Rollins) O'Kane & Al-Shehbaz (Missouri bladderpod) from *Lesquerella filiformis* Rollins (Rollins 1956, pp. 201–202; Rollins 1993, p. 618) is supported by Al-Shehbaz and O'Kane's (2002, pp. 319–320) extensive molecular, ecological, morphological, and distributional data. Al-Shehbaz and O'Kane (2002, p. 321) concluded that the genus *Lesquerella* should be united with the earlier-published genus *Physaria,* initially discussed in Gray (1848, pp. 161–162). Although Rollins (1939, pp. 393–398; 1993, pp. 588–589, pp. 696–697) supported the separation of the two genera because *Physaria* has didymous fruits with deep sinuses between the valves distally, and often proximally as well, he also noted strong similarities in the floral patterns, growth, and trichome morphology between *Lesquerella* and *Physaria* (Al-Shehbaz and O'Kane 2002, p. 319). The genera are also characterized by their colpate pollen grains, which is a distinguishable synapomorphic trait from the rest of the family (Al-Shehbaz and O'Kane 2002, p. 320). The new combination is *Physaria filiformis* (Rollins) O'Kane & Al-Shehbaz (Al-Shehbaz and O'Kane 2002, p. 323). Only North American species' nomenclatural adjustments were included in Al-Shehbaz and O'Kane's publication (2002, p. 321). This taxonomic change is included in our most recent 5-year review for the species (USFWS 2008, p. 2), as well as the reclassification of this plant from endangered to threatened status on October 15, 2003 (68 FR 59337). This species will continue to be listed as threatened.

*Rhodiola integrifolia ssp. leedyi*

The scientific name change of *Rhodiola integrifolia* ssp. *leedyi* (Leedy's roseroot) from *Sedum integrifolium* ssp. *leedyi* is supported by extensive morphological and genetic studies. Carl Linnaeus described the genus *Rhodiola* in 1753, recognizing it as distinct from the genus *Sedum* (Moran 2000, p. 137; Ohba 2003, p. 210), but many twentieth century authors regarded the genus as a synonym of *Sedum* L. (Ohba 1980, pp. 356–358). However, recent evidence, including chloroplast and nuclear DNA data, support the original recognition of *Sedum* and *Rhodiola* as distinct genera (Ohba 1980, pp. 356–358; Van Ham and 'T Hart 1998, p. 127; Ohba 2003, p. 210; Mayuzumi and Ohba 2004, p. 588). R. T. Clausen (1975, p. 474), following the mid-twentieth century trend, treated *Rhodiola* as a subgenus of *Sedum,* but the *Flora of North America* has more recently returned to the original recognition of *Rhodiola* as a distinct genus (Moran 2009, p. 164) that includes Leedy's roseroot. The new combination is *Rhodiola integrifolia* Rafinesque ssp. *leedyi* (Rosendahl & J. W. Moore) H. Ohba (Ohba 2003, p. 218). The species was listed as threatened on April 22, 1992 (57 FR 14649) and will continue to be listed as threatened.

*Mimulus michiganensis*

The scientific name change of *Mimulus michiganensis* from *Mimulus glabratus* var. *michiganensis* is supported by Posto and Prather's (2003, pp. 172–173) extensive evolutionary and genetic studies. At the time of its listing (55 FR 25596; June 21, 1990), *Mimulus glabratus* var. *michiganensis* (Michigan monkey-flower) was ranked as a variety. Posto and Prather's (2003, pp. 172–178) study supports the elevation of the taxon in rank to species *Mimulus michiganensis,* and, therefore, the new combination was established and accepted in the scientific community. Pennell (1935 *in* USFWS 1997, p. 1) originally described the taxon as a subspecies of *M. glabratus,* and Fassett (1939 *in* USFWS 1997, p. 1) subsequently gave the taxon varietal status. Past researchers noted morphological overlap with other taxa, particularly the more common, wide-ranging James' monkey-flower (*M. glabratus* var. *jamesii*) (Crispin 1981 in USFWS 1997, p. 1; Bliss 1983 *in* USFWS 1997, p. 1; Bliss 1986 in USFWS 1997, p. 1), but floral character studies of closely related taxa supported maintaining variety *michiganensis* as a distinct taxonomic entity (Bliss 1983 *in* USFWS 1997, p. 1; Bliss 1986 in USFWS 1997, p. 1; Minc 1989 in USFWS 1997, p. 1).

However, random amplified polymorphic DNA (RAPD) data (Posto and Prather 2003, pp. 176–177) revealed the following: *M. michiganensis* is genetically distinct from other members of the *Mimulus* complex; it has low genetic similarity to *M. glabratus* var. *jamesii* (a species implicated in its origin); and groups of *M. michiganensis* individuals separate from all other individuals in the Unweighted Pair Group Method with Arithmetic Mean (UPGMA) phenogram. In addition, *M. michiganensis* is not interfertile with

any other member of the M. glabratus complex, and it maintains its morphological distinctiveness where it is found sympatric with other *M. glabratus* (Posto and Prather 2003, p. 177). For these reasons, Posto and Prather (2003, p. 172) report the elevation of the taxon in rank from variety to species, and they found no evidence to support earlier hypotheses or a role of *M. guttatus* in the origin of *M. michiganensis* through hybridization with *M. glabratus* var. *jamesii* or through direct ancestry via an aneuploidy event. The species will continue to be listed as endangered.

**Required Determinations**

*Paperwork Reduction Act of 1995*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

We have determined that we do not need to prepare Environmental Assessments, or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted under section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (43 FR 49244).

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To help us to revise this rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**References Cited**

A complete list of the referenced materials is available upon request from the U.S. Fish and Wildlife Service Midwest Regional Office (*see* **FOR FURTHER INFORMATION CONTACT**).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625; 100 Stat. 3500; unless otherwise noted.

**§ 17.12 [Amended]**

■ 2. Amend the List of Endangered and Threatened Plants in § 17.12(h) by:

■ a. Removing the entries under FLOWERING PLANTS for "*Lesquerella filiformis*", "*Mimulus glabratus* var. *michiganensis*", *and* "*Sedum integrifolium* ssp. *leedyi*"*;* and

■ b. Adding in alphabetic order under FLOWERING PLANTS entries for "*Mimulus michiganensis (=M. glabratus var. michiganensis)*", "*Physaria filiformis (=Lesquerella f.)*", and "*Rhodiola integrifolia* ssp. *leedyi (=Sedum integrifolium* ssp. *l.)*" to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| * | * | * | * | * | * | * | |
| *Mimulus michiganensis (=Mimulus glabratus* var. *michiganensis*). | Michigan monkey-flower. | U.S.A. (MI) ..... | Scrophulariaceae .... | E | 392, 780 | NA | NA |
| * | * | * | * | * | * | * | |
| *Physaria filiformis* (=*Lesquerella f.).* | Missouri bladderpod | U.S.A. (AR, MO) ..... | Brassicaceae ..... | T | 253, 739, 780 | NA | NA |
| * | * | * | * | * | * | * | |
| *Rhodiola integrifolia* ssp. *leedyi (=Sedum integrifolium* ssp. *l.*). | Leedy's roseroot ..... | U.S.A. (MN, NY) ..... | Crassulaceae ..... | T | 460, 780 | NA | NA |
| * | * | * | * | * | * | * | |

Dated: August 19, 2010.

**Wendi Weber,**

*Acting Deputy Director, Fish and Wildlife Service.*

[FR Doc. 2010–22810 Filed 9–13–10; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 0910131363–0087–02]**

**RIN 0648–XY99**

## Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Yellowfin Sole in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of the 2010 yellowfin sole total allowable catch (TAC) assigned to the Bering Sea and Aleutian Islands trawl limited access sector to the Amendment 80 cooperative in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2010 total allowable catch of yellowfin sole to be fully harvested.

**DATES:** Effective September 9, 2010, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 yellowfin sole TAC assigned to the Bering Sea and Aleutian Islands trawl limited access sector is 42,369 metric tons (mt) and to the Amendment 80 cooperative is 90,733 mt as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

The Administrator, Alaska Region, NMFS, has determined that 20,000 mt of the yellowfin sole TAC assigned to the BSAI trawl limited access sector will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 20,000 mt of yellowfin sole from the BSAI trawl limited access sector to the Amendment 80 cooperative in the BSAI. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated yellowfin sole following the procedures set forth in § 679.91(f)(3).

The harvest specifications for yellowfin sole included in the harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) are revised as follows: 22,369 mt to the BSAI trawl limited access sector and 110,733 mt to the Amendment 80 cooperative in the BSAI. Table 7a is correctly revised and republished in its entirety as follows:

TABLE 7A—FINAL 2010 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

| Sector | Pacific ocean perch | | | Flathead sole | Rock sole | Yellowfin sole |
|---|---|---|---|---|---|---|
| | Eastern Aleutian District | Central Aleutian District | Western Aleutian District | BSAI | BSAI | BSAI |
| TAC | 4,220 | 4,270 | 6,540 | 60,000 | 90,000 | 219,000 |
| CDQ | 452 | 457 | 700 | 6,420 | 9,630 | 23,433 |
| ICA | 100 | 50 | 50 | 5,000 | 10,000 | 2,000 |
| BSAI trawl limited access | 367 | 376 | 116 | 0 | 0 | 22,369 |
| Amendment 80 | 3,302 | 3,387 | 5,674 | 48,580 | 70,370 | 171,198 |
| Amendment 80 limited access | 1,751 | 1,796 | 3,009 | 5,708 | 17,507 | 60,465 |
| Amendment 80 cooperatives | 1,551 | 1,591 | 2,666 | 42,872 | 52,863 | 110,733 |

This will enhance the socioeconomic well-being of harvesters dependent upon yellowfin sole in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of yellowfin sole by the BSAI trawl limited access sector and, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperative that participates in this BSAI fishery.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of yellowfin sole from the BSAI trawl limited access sector to the Amendment 80 cooperative in the BSAI. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 8, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of

prior notice and opportunity for public comment.

This action is required by § 679.91 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 9, 2010.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–22868 Filed 9–9–10; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 0910131363–0087–02]**

**RIN 0648–XZ01**

## Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific cod in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating projected unused amounts of Pacific cod from catcher vessels using trawl gear to American Fisheries Act catcher/processors and the Amendment 80 cooperative in the Bering Sea and Aleutian Islands management area. These actions are necessary to allow the 2010 total allowable catch of Pacific cod established for trawl catcher vessels to be harvested.

**DATES:** Effective September 9, 2010, until 2400 hours, A.l.t., December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586 7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 Pacific cod total allowable catch (TAC) in the BSAI is 168,780 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010). Pursuant to ' 679.20(a)(7)(ii), the allocations of the Pacific cod TAC are 3,467 mt to American Fisheries Act (AFA) trawl catcher/processors and 16,878 mt to the Amendment 80 cooperative. The allocation to catcher vessels using trawl gear is 32,809 mt after one reallocation (75 FR 52478, August 26, 2010).

As of September 8, 2010 the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that catcher vessels using trawl gear will not be able to harvest 4,000 mt of Pacific cod allocated to those vessels under ' 679.20(a)(7)(ii). The Regional Administrator has determined that the projected unharvested amount is unlikely to be harvested by any of the other catcher vessel sectors described in § 679.20(a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(iii)(B), NMFS apportions 600 mt of Pacific cod from catcher vessels using trawl gear to AFA trawl/catcher processors and 3,400 mt of Pacific cod from catcher vessels using trawl gear to the Amendment 80 cooperative.

The allocations for Pacific cod specified in the final 2010 and 2011 final harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) and one reallocation (75 FR 52478, August 26, 2010) are revised as follows: 4,067 mt to AFA catcher/processors using trawl gear, 20,278 mt to the Amendment 80 cooperative, and 28,809 mt to catcher vessels using trawl gear.

This will enhance the socioeconomic well-being of harvesters dependent upon Pacific cod in this area. The Regional Administrator considered the following factors in reaching this decision: (1) the current catch of Pacific cod by the applicable BSAI sectors and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in the sectors participating in this fishery.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 8, 2010.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by ' 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 9, 2010.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–22871 Filed 9–9–10; 4:15 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 75, No. 177
Tuesday, September 14, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–0853; Directorate Identifier 2010–NM–116–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD would require repetitive testing of the stabilizer takeoff warning switches, and corrective actions if necessary. This proposed AD results from reports that the warning horn did not sound during the takeoff warning system test of the S132 "nose up stab takeoff warning switch." We are proposing this AD to detect and correct a takeoff warning system switch failure, which could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

**DATES:** We must receive comments on this proposed AD by October 29, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6472; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0853; Directorate Identifier 2010–NM–116–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

We received reports that the warning horn did not sound during the takeoff warning system test of the S132 "nose up stab takeoff warning switch." Certain airplanes were found to have switch failures, which resulted in lack of aural warning when the stabilizer was positioned outside of the green band limits. Also, operators found that both internal contacts would not actuate during switch rotation. A takeoff warning system switch failure, if not corrected, could result in auto-rotation, resulting in tail strike, stall, high-speed runway overrun, rejected takeoff, or failure to clear terrain or obstacles after takeoff, which could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

### Relevant Service Information

We have reviewed Boeing Service Bulletin 737–27–1289, dated April 7, 2010, which describes procedures for repetitive testing of the stabilizer takeoff warning switches. The corrective actions include replacing failed stabilizer warning switches.

### FAA's Determination and Requirements of this Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

### Costs of Compliance

We estimate that this proposed AD would affect 963 airplanes of U.S. registry. We also estimate that it would take 1 work-hour per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $81,855, or $85 per product.

### Authority for this Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify this proposed regulation*:

1. Is not a "significant regulatory action" under Executive Order 12866,

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**The Boeing Company:** Docket No. FAA–2010–0853; Directorate Identifier 2010–NM–116–AD.

**Comments Due Date**

(a) We must receive comments by October 29, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–27–1289, dated April 7, 2010.

**Subject**

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

**Unsafe Condition**

(e) This AD results from reports that the warning horn did not sound during the takeoff warning system test of the S132 "nose up stab takeoff warning switch." The Federal Aviation Administration is issuing this AD to detect and correct a takeoff warning system switch failure, which could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

**Compliance**

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Test**

(g) Within 6 months after the effective date of this AD, test the stabilizer takeoff warning switches, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–27–1289, dated April 7, 2010. Repeat the test at intervals not to exceed 750 flight hours.

**Replacement and Re-test**

(h) If any stabilizer takeoff warning switch fails the test required in paragraph (g) or (h) of this AD, replace the stabilizer takeoff warning switch with a new switch and test the new switch before further flight, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–27–1289, dated April 7, 2010. Within 750 flight hours after replacement of any switch, test the replaced switch, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–27–1289, dated April 7, 2010, and repeat this test on the replaced switch thereafter at intervals not to exceed 750 flight hours.

**Special Flight Permit**

(i) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6472; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on September 3, 2010.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–22847 Filed 9–13–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 922

**[Docket No. 070726412–0071–01]**

**RIN 0648–AV88**

## Proposed Research Area Within the Gray's Reef National Marine Sanctuary

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing to create a research area within the Gray's Reef National Marine Sanctuary (GRNMS, or Sanctuary). A research area is a region specifically designed for conducting controlled scientific studies in the absence of certain human activities that could affect the results. NOAA proposes to prohibit fishing, diving, and stopping while transiting in the proposed research area.

**DATES:** Comments must be received by December 13, 2010.

Dates for public hearings are:

(1) October 19, 6–8 p.m., Richmond Hill City Center, 529 Cedar Street, Richmond Hill, GA.

(2) October 20, 6–8 p.m., Bulloch County Courthouse, 30 N. Main Street, Statesboro, GA.

(3) October 21, 6–8 p.m., College of Coastal Georgia, Southeast Georgia Conference Center, 3700 Altama Avenue, Brunswick, GA.

**ADDRESSES:** You may submit comments, identified by 0648–AV88, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov* (search for docket NOAA–NOS–2009–0103)
- *Mail:* Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411, Attn: Dr. George Sedberry, Superintendent.

*Instructions:* No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

ONMS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Copies of the draft environmental impact statement and proposed rule can be downloaded or viewed on the Internet at *http://www.regulations.gov* (search for docket #NOAA–NOS–2009–0103) or at *http://graysreef.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Resource Protection Coordinator Becky Shortland at (912) 598–2381.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Gray's Reef National Marine Sanctuary*

NOAA designated GRNMS as the nation's fourth national marine sanctuary in 1981 for the purposes of: protecting the quality of this unique and fragile ecological community; promoting scientific understanding of this live bottom ecosystem; and enhancing public awareness and wise use of this significant regional resource. GRNMS is located 16 miles offshore of Sapelo Island, Georgia, on an area of continental shelf stretching from Cape Hatteras, North Carolina, to Cape Canaveral, Florida (referred to as the South Atlantic Bight). GRNMS protects 16.68 square nautical miles of open ocean and submerged lands of particularly dense and nearshore patches of productive live bottom habitat. The sanctuary is influenced by complex ocean currents and serves as a mixing zone for temperate (colder water) and sub-tropical species. An estimated 180 species of fish, encompassing a wide variety of sizes, forms, and ecological roles, have been recorded at GRNMS. Loggerhead sea turtles, a threatened species, use GRNMS year-round for foraging and resting, and the highly endangered northern right whale is occasionally seen in Gray's Reef.

The sanctuary contains one of the largest nearshore live-bottom reefs in the southeastern United States. Within the sanctuary, rock outcroppings stand above the shifting sands. The series of rock ledges and sand expanses has produced a complex habitat of burrows, troughs, and overhangs that provide a solid base for the abundant sessile invertebrates to attach and grow. This topography supports an unusual assemblage of temperate and tropical marine flora and fauna. This flourishing ecosystem attracts numerous species of benthic and pelagic fish including mackerel, grouper, red snapper, black sea bass, angelfish, and a host of other fishes. Since GRNMS lies in a transition area between temperate and tropical waters, the composition of reef fish populations changes seasonally.

### *B. Purpose and Need for Research Area*

In 2008, NOAA released a report on the condition of GRNMS providing a summary of the status of resources, pressures on those resources, current conditions and trends, and management responses to the pressures that threaten the integrity of the marine environment. Specifically, the document includes information on water quality, habitat, living resources, and maritime archaeological resources and the human activities that affect them. Overall, the resources protected by GRNMS appear to be in fair condition, as defined in the 2008 GRNMS condition report. Emerging threats to the sanctuary include invasive species, contamination of organisms by waterborne chemicals from human coastal activities, climate change and ever increasing coastal populations and recreational use of the sanctuary. For a copy of the 2008 GRNMS condition report, please visit *http://sanctuaries.noaa.gov/science/condition/grnms/welcome.html.*

NOAA's regulations for the sanctuary limit fishing gear in the sanctuary to rod and reel (which is used by the vast majority of users in the sanctuary), and handline. Despite these gear restrictions, fishing continues to impact the living marine resources and habitat of the sanctuary. Recreational fishing is the primary fishing activity and occurs throughout the sanctuary but tends to be concentrated in certain areas.

Because fishing is allowed throughout the sanctuary, NOAA has limited options for gaining better management information on the effects it has on fish and invertebrate populations and their habitats. A research area would allow investigations to evaluate possible impacts from fishing—particularly bottom fishing—on the sanctuary's natural resources by providing a zone relatively free of human activities and impacts that can be compared to the rest of the sanctuary. The research area would also allow researchers to more accurately determine the effects of natural events (*e.g.,* hurricanes) and cycles (*e.g.* droughts) on the sanctuary. The research area could also serve as an important sentinel site to monitor and study impacts of climate change, such as ocean acidification, which can be better determined in the absence of additional human factors such as fishing. Sentinel sites are areas well suited to ensure sustained observations of environmental change, to track indicators of ecosystem integrity, and to provide early warning services. Currently the effects of subtle natural variability may be masked by the sometimes overwhelming effect of fishing. The ability to conduct these investigations in a marine environment free of human influences is critical to meet the resource protection and scientific research mandates of the GRNMS.

To provide for comprehensive and coordinated conservation and management of natural resources of GRNMS as required by the National Marine Sanctuaries Act (NMSA), research that includes a control or research area where human impacts are limited is needed. There are currently no natural live-bottom areas in the South Atlantic Bight that have been set aside for scientific use. Because GRNMS is relatively shallow, it affords the opportunity to conduct experiments and make observations using SCUBA in a productive reef habitat that is relatively close to shore. The proximity of the sanctuary to coastal universities and marine research laboratories makes GRNMS a logical natural area that can be used to further understanding and management of these complex ecosystems. There is scientific agreement that without having an area of the naturally occurring live bottom devoted to research, it becomes very difficult to understand how these reefs function in the life history of many economically valuable species, and the

effects of extractive uses on that productivity. NOAA believes the proposed action provides a balance between user concerns and the research opportunities that are emphasized in the sanctuary's goals and objectives.

*C. Research Area Background*

The concept of a research (control) area within the sanctuary has been under discussion for many years. The idea was first raised by members of the public in 1999 during the early stages of the GRNMS management plan review process at public scoping meetings. The GRNMS advisory council set a target to increase the opportunity to distinguish scientifically between natural and human-induced change to species populations in the sanctuary (NMSP 2006). As a means to reach this target, the Sanctuary Advisory Council (SAC) formed a broad-based Research Area Working Group (RAWG) to consider the concept of a research area within the sanctuary.

The RAWG consisted of representatives from research, academia, conservation groups, sport fishing and diving interests, education, commercial fishing, law enforcement and state and federal agency representatives. The RAWG employed a consensus-driven, constituent-based process. A Geographic Information System (GIS) tool was also developed by NOAA to analyze options RAWG members brought forward; this tool is described in more detail in the environmental impact statement supporting this action.

The principle conclusion of the RAWG, which was ultimately adopted by the entire SAC, was that significant research questions exist at GRNMS that can only be addressed by establishing a research area. The final SAC recommendations to NOAA, presented in 2008, also included the unanimous recommendation that all fishing be prohibited in the research area.

In the decision to recommend prohibition of all fishing in the research area, the RAWG took into consideration new information on the growing knowledge of the linkages between benthic and pelagic natural communities. The RAWG also considered methods used by sport fishermen to fish both coastal pelagic and bottom fish (reef) species at the same time. In addition, downriggers and planers, currently permitted in the sanctuary, allow anglers to fish the entire water column, including near the bottom. These gear types can impact benthic communities and allow catch of bottom fish, a primary marine resource to be studied in the research area. Therefore, allowing any fishing including trolling for pelagic fish species could significantly compromise the integrity and effectiveness of a research area.

Law enforcement officials expressed concern that the enforcement of prohibitions on fishing would be more difficult if diving or stationary vessels were allowed to continue in the research area, due to the difficulty of determining the activities of a boat's occupants from a distance or as officers approach a boat. The SAC also observed that any recreational diving activity in the research area would make law enforcement difficult and could undermine the validity of the research area.

From 2004–2008, the RAWG and SAC also continued to evaluate criteria and boundaries utilizing the GIS tool and incorporating new information as it became available. Ultimately, four boundary scenarios were recommended as viable locations for a research area in GRNMS. These boundary scenarios and several activity restrictions became the focus of public scoping during March and April 2008. After consideration of public comments and deliberations by the RAWG, the sanctuary superintendent received final recommendations from the SAC in January 2009. The proposed action presented in this document are the direct result of the RAWG's recommendations that were adopted by the SAC and provided to GRNMS superintendent, and comments received during the spring 2008 public scoping. Several alternatives to the proposed action are analyzed in the accompanying draft environmental impact statement (DEIS).

*E. South Atlantic Fishery Management Council*

The action recommended to GRNMS by the SAC would close the research area to all fishing activity. Therefore, pursuant to section 304(a)(5) of the National Marine Sanctuaries Act (16 U.S.C. 1434(a)(5); NMSA), NOAA's Office of National Marine Sanctuaries (ONMS) consulted with the South Atlantic Fishery Management Council (SAFMC or Council) to develop fishing regulations associated with this proposed research area.

On March 4, 2009, the SAFMC passed a motion to: "Defer to Gray's Reef NMS for rule-making in terms of the establishment of the Research Area." On April 22, 2009, the Council's decision to allow ONMS to draft the fishing regulations was formally communicated when the SAFMC sent a letter to the GRNMS Superintendent deferring fishing regulations for this action to the ONMS.

**II. Proposed Revisions to GRNMS Terms of Designation**

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. To implement this action, NOAA proposes to modify the GRNMS terms of designation, which were most recently published in the **Federal Register** on October 12, 2006 (74 FR 60055), to read as follows (new text in bold and deleted text in brackets and italics):

1. No change to Article 1, Designation and Effect

2. No change to Article 2, Description of the Area

3. No change to Article 3, Characteristics of the Area

4. Article 4, Scope of Regulation, Section 1, Activities Subject to Regulation, is modified by:

a. Modifying the 4th bullet of Section 1 to read as follows: "Injuring, catching, harvesting, or collecting any marine organism or any part thereof, living or dead, or attempting any of these activities;, [ *by any means except by use of rod and reel, and handline gear;*]"

b. Modifying the 6th bullet of Section 1 as follows: "Using explosives, or devices that produce electric charges underwater; [and"

c. Modifying the 7th bullet of Section 1 as follows: "Moving, removing, injuring, or possessing a historical resource, or attempting to move, remove, injure, or possess a historical resource[.] **, and**"

d. Adding the following at the end of Section 1: "**8. Diving.**"

5. No Change to Article 5, Relation to Other Regulatory Programs

6. No change to Article 6, Alteration of This Designation

The revised terms of designation would read as follows:

**Revised Designation Document for the Gray's Reef National Marine Sanctuary**

*Article 1. Designation and Effect*

The Gray's Reef National Marine Sanctuary was designated on January 16, 1981 (46 FR 7942). The Act authorizes the Secretary of Commerce to

issue such regulations as are necessary to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational or aesthetic resources and qualities of a national marine sanctuary. Section 1 of Article 4 of this Designation Document lists activities of the type that are presently being regulated or may need to be regulated in the future, in order to protect sanctuary resources and qualities. Listing in Section 1 does not mean a type of activity is currently regulated or would be regulated in the future. If a type of activity is not listed, however, it may not be regulated except on an emergency basis, unless section 1 is amended to include the type of activity following the same procedures by which the original designation was made. Nothing in this Designation Document is intended to restrict activities that do not cause an adverse effect on the resources or qualities of the sanctuary or on sanctuary property or that do not pose a threat of harm to users of the sanctuary.

*Article 2. Description of the Area*

The sanctuary consists of an area of ocean waters and the submerged lands thereunder located 17.5 nautical miles due east of Sapelo Island, Georgia. The exact coordinates are defined by regulation (15 CFR 922.90).

*Article 3. Characteristics of the Area*

The sanctuary consists of submerged calcareous sandstone rock reefs with contiguous shallow-buried hard layer and soft sedimentary regime which supports rich and diverse marine plants, invertebrates, finfish, turtles, and occasional marine mammals in an otherwise sparsely populated expanse of ocean seabed. The area attracts multiple human uses, including recreational fishing and diving, scientific research, and educational activities.

*Article 4. Scope of Regulation*

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the NMSA. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of the area. Because an activity is listed here does not mean that such activity is being or would be regulated. If an activity is listed, however, the activity can be regulated, after compliance with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA (16 U.S.C. 1434(a) and (b)).

1. Dredging, drilling into, or otherwise altering the submerged lands of the sanctuary;

2. Within the boundary of the sanctuary, discharging or depositing any material or other matter or constructing, placing, or abandoning any structure, material or other matter; or discharging or depositing any material or other matter outside the boundary of the sanctuary that subsequently enters the sanctuary and injures a sanctuary resource or quality;

3. Vessel operations, including anchoring;

4. Injuring, catching, harvesting, or collecting any marine organism or any part thereof, living or dead, or attempting any of these activities;

5. Possessing fishing gear that is not allowed to be used in the sanctuary;

6. Using explosives, or devices that produce electric charges underwater;

7. Moving, removing, injuring, or possessing a historical resource, or attempting to move, remove, injure, or possess a historical resource; and

8. Diving.

Section 2. Emergency Regulation

Where necessary to prevent or minimize the destruction of, loss of, or injury to a sanctuary resource or quality; or to minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in Section 1 of this Article, is subject to immediate temporary regulation, including prohibition.

*Article 5. Relation to Other Regulatory Programs*

Section 1. Defense Activities

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practical.

Section 2. Other Programs

All applicable regulatory programs will remain in effect, and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the sanctuary unless authorizing any activity prohibited by a regulation implementing Article 4.

*Article 6. Alteration of This Designation*

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the procedures outlined in paragraphs (a) and (b) of section 304 of the Act including public hearings, consultation with interested Federal, State, and local government agencies, and the South Atlantic Fishery Management Council, review by the appropriate congressional committees, and approval by the Secretary of Commerce or designee.

*[End of designation document]*

**III. Summary of Proposed Revisions to the Sanctuary Regulations**

*A. Establishment of a Research Area*

The proposed regulations would establish a research area within the GRNMS that would prohibit fishing, diving and stopping a vessel within the area. This area is referred to as the Southern Boundary Option. Please refer to the GRNMS Web site and the draft environmental impact statement supporting this rulemaking for more information and a map depicting the location of the proposed research area within the GRNMS. The research area, which would occupy the southern portion of the GRNMS, would be wholly within the boundary of the sanctuary and would not change its overall size. The total area that would be designated as a research area inside GRNMS would be 6.25 square nautical miles (see the Appendix for coordinates).

According to boat sighting data from 1999–2007, only 9.2 percent of boats sighted in the sanctuary visited or transited the area of the proposed research area, leading to the conclusion that this area is not as popular with sport fishermen and sport divers as the north-central portion of the sanctuary. NOAA believes the proposed action provides a balance between user concerns and the research opportunities that are emphasized in the sanctuary's goals and objectives.

*B. Activities Prohibited Within the Research Area*

If adopted, the regulatory changes would prohibit: (1) Injuring, catching, harvesting, or collecting sanctuary resources (including by fishing); (2) diving within the research area; and (3) stopping a vessel in the research area. The proposed regulations would add prohibitions specific to the research area in addition to the existing prohibitions set out in 922.92, which apply throughout the Sanctuary. In the proposed research area, the following activities would be prohibited and thus unlawful for any person to conduct or cause to be conducted: Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any

part thereof, living or dead (there would be a rebuttable presumption that any marine organism or part thereof, living or dead, found in the possession of a person within the research area has been collected from the research area); possessing, carrying, or using any fishing gear or means for fishing unless such gear or means is stowed and not available for immediate use while on board a vessel transiting through the research area without interruption or for valid law enforcement purposes; diving; stopping a vessel when transiting the research area.

*C. Enforcement*

If adopted, the proposed regulations would be enforced by NOAA and other authorized agencies *(i.e.,* United States Coast Guard, and Georgia Department of Natural Resources) in a coordinated and comprehensive way. Enforcement actions for an infraction would be prosecuted under the appropriate statutes or regulations governing that infraction. The prohibition against catching or harvesting marine organisms would include a rebuttable presumption that any marine organism or part thereof found in the possession of a person within the research area has been collected from the research area.

*D. Permitting*

If adopted, a research area in the southern portion of the sanctuary would provide researchers a valuable opportunity to discern between human-induced and natural changes in the Gray's Reef area. Researchers would be required to obtain permits to conduct activities related to research that would otherwise be prohibited by the regulations.

The ONMS regulations, including the regulations for the GRNMS, allow NOAA to issue permits to conduct activities that would otherwise be prohibited by the regulations (15 CFR 922 and 922.93). Most permits are issued by the Superintendent of the GRNMS. Requirements for filing permit applications are specified in ONMS regulations and the Office of Management and Budget-approved application guidelines (OMB control number 0648–0141). Criteria for reviewing permit applications are also contained in the ONMS regulations at 15 CFR 922.93. In general, permits may be issued for activities related to scientific research, education, and management.

## IV. Classification

*A. National Marine Sanctuaries Act*

Section 301(b) of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1434) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. Section 304(a)(4) of the NMSA requires the procedures specified in section 304 for designating a national marine sanctuary be followed for modifying any term of designation. This action proposes to revise the terms of designation (*e.g.,* scope of regulations) for the GRNMS. Therefore, NOAA is required to comply with Section 304. In addition, Section 304(a)(5) of the NMSA requires that NOAA consult with the appropriate fishery management council on any action proposing to regulate fishing. As stated in the preamble above, NOAA has worked with the South Atlantic Fishery Management Council, State of Georgia, and NOAA Fisheries Service on this issue and all necessary requirements have been completed. In accordance with Section 304, the appropriate documents are being submitted to the specified Congressional committees.

*B. National Environmental Policy Act*

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321–4370(a)), a DEIS has been prepared for this proposed action. The DEIS contains a statement of the purpose and need for the project, description of proposed alternatives including the no action alternative, description of the affected environment, and evaluation and comparison of environmental consequences including cumulative impacts. The preferred alternative incorporates the creation of a research area in the Southern Option Boundary, and proposed prohibition of fishing, diving, and stopping a vessel while transiting through the research area. Copies of the DEIS are available upon request at the address and Web site listed in the **ADDRESSES** section of this rule.

*C. Executive Order 12866: Regulatory Impact*

Under Executive Order (E.O.) 12866, if the proposed regulations are "significant" as defined in section 3(f)(1), (2), (3), or (4) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This proposed rule has been determined to be not significant within the meaning of E.O. 12866.

*D. Executive Order 13132: Federalism Assessment*

All of the proposed actions would occur in the Exclusive Economic Zone beyond state jurisdiction. There are no federalism implications as that term is used in E.O. 13132. The changes will not preempt State law, but will simply complement existing State authorities. In keeping with the intent of the Order, NOAA consulted with a number of entities within the region, the State of Georgia, and the South Atlantic Fishery Management Council which participated in development of the research area.

*E. Regulatory Flexibility Act*

In accordance with the requirements of section 603(a) of the Regulatory Flexibility Act (RFA; 5 U.S.C. 603(a)), NOAA has prepared an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed action on small businesses. Section 603(b) (5 U.S.C. 603(b)) requires that each IRFA contain a description of the reasons the action is being considered, a succinct statement of the objectives of, and legal basis for, the action, a description of and, where feasible, an estimate of the number of small entities to which the proposed action will apply, a description of the projected reporting, recordkeeping and other compliance requirements of the proposed action, including an estimate of the classes of small entities which would be subject to the requirement and the type of professional skills necessary for preparation of the report or record, and an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed action.

In addition, section 603(c) (5 U.S.C. 603(c)) requires that each IRFA contain a description of any significant alternatives to the proposed action which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed action on small entities. A statement of why NOAA is considering this action and the objectives of, and legal basis for, the proposed rule is contained in the preamble section for the proposed rule and is not repeated here. The analysis conducted to meet the remaining requirements under the RFA follows.

Initial Regulatory Flexibility Act Analysis

The Small Business Administration has established thresholds on the designation of businesses as "small entities." A fish-harvesting business is considered a "small" business if it has annual receipts not in excess of $3.5 million (13 CFR 121.201). Sports and recreation businesses and scenic and sightseeing transportation businesses are considered "small" businesses if they have annual receipts not in excess of $6 million (13 CFR 121.201). According to these limits, each of the businesses listed below are considered small entities. All analyses are based on the most recently updated and best available information.

In 2002, a survey of charter fishing boat owners/operators was completed. This survey identified 15 charter boats that utilize GRNMS as one of their fishing locations. It was estimated that their 2001 total gross revenue was $1,029,000 and their total operating expenses was $582,000 with total profit of $447,000. Converting these values to 2008 dollars using the consumer price index results in gross revenue of $1,251,264, total operating expenses of $707,712, and total profit of $543,552. The survey found that approximately 40 percent of their fishing activity took place in GRNMS.

The economic impact of the five alternatives considered for this action, and further described in the DEIS, can be estimated by combining results from the 2002 survey with boat location analysis completed in 2008. The results of this analysis are summarized in Table 1. The five alternatives contain a no action alternative (i.e., no designation of a research area) and four alternatives distinguished by different locations within the sanctuary and by varying sizes. The Southern Boundary Option (preferred) impacts 9 percent of recreational fishing resulting in impacts of $46K to total gross revenue and $20K to total profit. The Optimal Scientific Boundary Option impacts 67 percent of recreational fishing resulting in impacts of $335K to total gross revenue and $146K to total profit. The Minimal User Impact Boundary Option impacts 15 percent of recreational fishing resulting in impacts of $75K to total gross revenue and $32K to total profit. The Compromise Boundary Option impacts 35 percent of recreational fishing resulting in impacts of $175K to total gross revenue and $76K to total profit.

This analysis assumes that all economic value associated with the areas closed is lost. Any factor that could mitigate or off-set the level of impact is not addressed. The estimated impacts are thought of as "maximum potential losses" because impacted businesses may take action to at least mitigate or off-set most losses (*i.e.,* by conducting charter operations somewhere nearby).

TABLE 1—ESTIMATED ECONOMIC IMPACTS TO RECREATIONAL CHARTER FISHING BUSINESSES BY ALTERNATIVE, IN 2008 $

| Alternative | Percent impact | Total impact to gross revenue | Total impact to profit |
|---|---|---|---|
| No Action | 0 | ..... | ..... |
| Southern Boundary Options (preferred) | 9 | 46,047 | 20,003 |
| Optimal Scientific Boundary Option | 67 | 335,339 | 145,672 |
| Minimal User Impact Boundary Option | 15 | 75,076 | 32,613 |
| Compromise Boundary Option | 35 | 175,177 | 76,097 |

No economic impact is expected to result to recreational charter diving businesses because there appear to be none currently operating within the sanctuary. In September 2007, in-person interviews were conducted with all businesses and organizations offering scuba diving trips along the Georgia coast. Four charter scuba operations and one scuba diving club were identified and interviewed. The interviews gathered information that included operating profiles, preferred diving locations and methods, detailed business data (revenue and costs), and general opinions of the current state of scuba diving and spearfishing off the Georgia coast. None of the businesses offer scuba diving trips to GRNMS.

*F. Paperwork Reduction Act*

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 0648–0141. The public reporting burden for national marine sanctuary permits is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Nationwide, NOAA issues approximately 200 national marine sanctuary permits each year. Of this amount, three permits are active for research activities within the GRNMS. Even though this proposed rule may result in a few additional permits applications for scientific research at GRNMS, this rule would not appreciably change the average annual number of respondents or the reporting burden for this information requirement. Therefore, NOAA has determined that the proposed regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov,* or fax to (202) 395–7285. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

**List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: September 3, 2010.

**Holly Bamford,**

*Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

## PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for Part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431 et seq.

2. In § 922.92, revise the section heading to read as follows:

**§ 922.92 Prohibited or otherwise regulated activities—Sanctuary-wide.**

* * * * *

3. In § 922.93, revise paragraph (a) to read as follows:

**§ 922.93 Permit procedures and criteria.**

(a) A person may conduct an activity prohibited by § 922.92(a)(1) through (a)(10) and § 922.94 if conducted in accordance within the scope, purpose, manner, terms and conditions of a permit issued under this section and § 922.48.

* * * * *

4. Add § 922.94 to Subpart I to read as follows:

**§ 922.94 Prohibited or otherwise regulated activities—Research area.**

In addition to the prohibitions set out in § 922.92, which apply throughout the Sanctuary, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the research area described in Appendix A to this subpart. The exceptions described in § 922.92(a) and (b) also apply to the prohibitions in this section:

(a)(1)(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead.

(ii) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the research area has been collected from the research area.

(2) Using any fishing gear or means for fishing, or possessing, or carrying any fishing gear or means for fishing unless such gear or means is stowed and not available for immediate use while on board a vessel transiting through the research area without interruption or for valid law enforcement purposes.

(3) Diving.

(4) Stopping a vessel in the research area.

(b) [Reserved]

5. Add Appendix A to Subpart I to read as follows:

### Appendix A to Subpart I of Part 922—Gray's Reef National Marine Sanctuary Research Area Boundary Coordinates

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

The research area boundary is defined by the coordinates provided in Table 1 and the following textual description. The research area boundary extends from Point 1, the southwest corner of the sanctuary, to Point 2 along a straight line following the western boundary of the Sanctuary. It then extends along a straight line from Point 2 to Point 3, which is on the eastern boundary of GRNMS. The boundary then follows the eastern boundary line of the sanctuary southward until it intersects the line of the southern boundary of GRNMS at Point 4, the southeastern corner of the sanctuary. The last straight line is defined by connecting Point 4 and Point 5, along the southern boundary of the GRNMS.

TABLE 1—COORDINATES FOR THE RESEARCH AREA

| Point ID | Latitude (north) | Longitude (west) |
|---|---|---|
| 1 ..... | 31.36250 N ..... | −80.92111 W |
| 2 ..... | 31.38444 N ..... | −80.92111 W |
| 3 ..... | 31.38444 N ..... | −80.82806 W |
| 4 ..... | 31.36250 N ..... | −80.82806 W |
| 5 ..... | 31.36250 N ..... | −80.92111 W |

[FR Doc. 2010–22567 Filed 9–10–10; 11:15 am]

**BILLING CODE 3510–NK–P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

**RIN 3038–AC46**

### Commodity Pool Operations: Relief From Compliance With Certain Disclosure, Reporting and Recordkeeping Requirements for Registered CPOs of Commodity Pools Listed for Trading on a National Securities Exchange; CPO Registration Exemption for Certain Independent Directors or Trustees of These Commodity Pools; Correction

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document corrects a missing e-mail address in a proposed rule published in the **Federal Register** of September 9, 2010, regarding relief from certain disclosure, reporting and recordkeeping requirements that Commission staff previously has issued on a case-by-case basis to commodity pool operators (CPOs).

**FOR FURTHER INFORMATION CONTACT:** David A. Stawick, 202–418–5071.

**Correction**

In proposed rule FR Doc. 2010–22395, beginning on page 54794 in the issue of September 9, 2010, make the following correction. In the **ADDRESSES** section, add the e-mail address *etfcpoexemptcomment@cftc.gov* in the place of "[email address TBD]".

Dated: September 9, 2010.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010–22906 Filed 9–13–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–142800–09]**

**RIN 1545–BI96**

### Guidance Regarding Deferred Discharge of Indebtedness Income of Corporations and Deferred Original Issue Discount Deductions; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–142800–09) that was published in the **Federal Register** on Friday, August 13, 2010 (75 FR 49428) primarily affecting C corporations regarding the acceleration of deferred discharge of indebtedness (COD) income (deferred COD income) and deferred original issue discount (OID) deductions (deferred OID deductions) under section 108(i)(5)(D), and the calculation of earnings and profits as a result of an election under section 108(i). In addition, these regulations provide rules applicable to all taxpayers regarding deferred OID deductions under section 108(i) as a result of a reacquisition of an applicable debt instrument by an issuer or related party.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Robert M. Rhyne, (202) 622–7790 and Rubin B. Ranat, (202) 622–7530 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

The correction notice that is the subject of this document is under section 108 of the Internal Revenue Code.

**Need for Correction**

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–142800–09) contains an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations (REG–142800–09), which was the subject of FR Doc. 2010–20059, is corrected as follows:

On page 49429, column 2, in the authority citation for part 1, the language "Section 1.108(i)-0T also issued under 26 U.S.C. 108(i)(7). * * *" is removed and the language "Section 1.108(i)-0T also issued under 26 U.S.C. 108(i)(7) and 1502. * * *" is added in its place.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.*

[FR Doc. 2010–22791 Filed 9–13–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[REG–119921–09]**

**RIN 1545–BI69**

## Series LLCs and Cell Companies

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations regarding the classification for Federal tax purposes of a series of a domestic series limited liability company (LLC), a cell of a domestic cell company, or a foreign series or cell that conducts an insurance business. The proposed regulations provide that, whether or not a series of a domestic series LLC, a cell of a domestic cell company, or a foreign series or cell that conducts an insurance business is a juridical person for local law purposes, for Federal tax purposes it is treated as an entity formed under local law. Classification of a series or cell that is treated as a separate entity for Federal tax purposes generally is determined under the same rules that govern the classification of other types of separate entities. The proposed regulations provide examples illustrating the application of the rule. The proposed regulations will affect domestic series LLCs; domestic cell companies; foreign series, or cells that conduct insurance businesses; and their owners.

**DATES:** Written or electronic comments and requests for a public hearing must be received by December 13, 2010.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–119921–09), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–119921–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking portal at *http://www.regulations.gov* (IRS REG–119921–09).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Joy Spies, (202) 622–3050; concerning submissions of comments, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

**1. Introduction**

A number of States have enacted statutes providing for the creation of entities that may establish series, including limited liability companies (series LLCs). In general, series LLC statutes provide that a limited liability company may establish separate series. Although series of a series LLC generally are not treated as separate entities for State law purposes and, thus, cannot have members, each series has "associated" with it specified members, assets, rights, obligations, and investment objectives or business purposes. Members' association with one or more particular series is comparable to direct ownership by the members in such series, in that their rights, duties, and powers with respect to the series are direct and specifically identified. If the conditions enumerated in the relevant statute are satisfied, the debts, liabilities, and obligations of one series generally are enforceable only against the assets of that series and not against assets of other series or of the series LLC.

Certain jurisdictions have enacted statutes providing for entities similar to the series LLC. For example, certain statutes provide for the chartering of a legal entity (or the establishment of cells) under a structure commonly known as a protected cell company, segregated account company or segregated portfolio company (cell company). A cell company may establish multiple accounts, or cells, each of which has its own name and is identified with a specific participant, but generally is not treated under local law as a legal entity distinct from the cell company. The assets of each cell are statutorily protected from the creditors of any other cell and from the creditors of the cell company.

Under current law, there is little specific guidance regarding whether for Federal tax purposes a series (or cell) is treated as an entity separate from other series or the series LLC (or other cells or the cell company, as the case may be), or whether the company and all of its series (or cells) should be treated as a single entity.

Notice 2008–19 (2008–5 IRB 366) requested comments on proposed guidance concerning issues that arise if arrangements entered into by a cell constitute insurance for Federal income tax purposes. The notice also requested comments on the need for guidance concerning similar segregated arrangements that do not involve insurance. The IRS received a number of comments requesting guidance for similar arrangements not involving insurance, including series LLCs and cell companies. These comments generally recommended that series and cells should be treated as separate entities for Federal tax purposes if they are established under a statute with provisions similar to the series LLC statutes currently in effect in several States. The IRS and Treasury Department generally agree with these comments. *See* § 601.601(d)(2)(ii)(*b*).

**2. Entity Classification for Federal Tax Purposes**

*A. Regulatory Framework*

Sections 301.7701–1 through 301.7701–4 of the Procedure and Administration Regulations provide the framework for determining an organization's entity classification for Federal tax purposes. Classification of an organization depends on whether the organization is treated as: (i) A separate entity under § 301.7701–1, (ii) a "business entity" within the meaning of § 301.7701–2(a) or a trust under § 301.7701–4, and (iii) an "eligible entity" under § 301.7701–3.

Section 301.7701–1(a)(1) provides that the determination of whether an

entity is separate from its owners for Federal tax purposes is a matter of Federal tax law and does not depend on whether the organization is recognized as an entity under local law. Section 301.7701–1(a)(2) provides that a joint venture or other contractual arrangement may create a separate entity for Federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. However, a joint undertaking merely to share expenses does not create a separate entity for Federal tax purposes, nor does mere co-ownership of property where activities are limited to keeping property maintained, in repair, and rented or leased. *Id.*

Section 301.7701–1(b) provides that the tax classification of an organization recognized as a separate entity for tax purposes generally is determined under §§ 301.7701–2, 301.7701–3, and 301.7701–4. Thus, for example, an organization recognized as an entity that does not have associates or an objective to carry on a business may be classified as a trust under § 301.7701–4.

Section 301.7701–2(a) provides that a business entity is any entity recognized for Federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701–3) that is not properly classified as a trust or otherwise subject to special treatment under the Internal Revenue Code (Code). A business entity with two or more members is classified for Federal tax purposes as a corporation or a partnership. *See* § 301.7701–2(a). A business entity with one owner is classified as a corporation or is disregarded. *See* § 301.7701–2(a). If the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner. However, § 301.7701–2(c)(2)(iv) and (v) provides for an otherwise disregarded entity to be treated as a corporation for certain Federal employment tax and excise tax purposes.

Section 301.7701–3(a) generally provides that an eligible entity, which is a business entity that is not a corporation under § 301.7701–2(b), may elect its classification for Federal tax purposes.

*B. Separate Entity Classification*

The threshold question for determining the tax classification of a series of a series LLC or a cell of a cell company is whether an individual series or cell should be considered an entity for Federal tax purposes. The determination of whether an organization is an entity separate from its owners for Federal tax purposes is a matter of Federal tax law and does not depend on whether the organization is recognized as an entity under local law. Section 301.7701–1(a)(1). In *Moline Properties, Inc.* v. *Commissioner*, 319 U.S. 436 (1943), the Supreme Court noted that, so long as a corporation was formed for a purpose that is the equivalent of business activity or the corporation actually carries on a business, the corporation remains a taxable entity separate from its shareholders. Although entities that are recognized under local law generally are also recognized for Federal tax purposes, a State law entity may be disregarded if it lacks business purpose or any business activity other than tax avoidance. *See Bertoli* v. *Commissioner*, 103 T.C. 501 (1994); *Aldon Homes, Inc.* v. *Commissioner*, 33 T.C. 582 (1959).

The Supreme Court in *Commissioner* v. *Culbertson*, 337 U.S. 733 (1949), and *Commissioner* v. *Tower*, 327 U.S. 280 (1946), set forth the basic standard for determining whether a partnership will be respected for Federal tax purposes. In general, a partnership will be respected if, considering all the facts, the parties in good faith and acting with a business purpose intended to join together to conduct an enterprise and share in its profits and losses. This determination is made considering not only the stated intent of the parties, but also the terms of their agreement and their conduct. *Madison Gas & Elec. Co.* v. *Commissioner*, 633 F. 2d 512, 514 (7th Cir. 1980); *Luna* v. *Commissioner*, 42 T.C. 1067, 1077–78 (1964).

Conversely, under certain circumstances, arrangements that are not recognized as entities under State law may be treated as separate entities for Federal tax purposes. Section 301.7701–1(a)(2). For example, courts have found entities for tax purposes in some co-ownership situations where the co-owners agree to restrict their ability to sell, lease or encumber their interests, waive their rights to partition property, or allow certain management decisions to be made other than by unanimous agreement among co-owners. *Bergford* v. *Commissioner*, 12 F. 3d 166 (9th Cir. 1993); *Bussing* v. *Commissioner*, 89 T.C. 1050 (1987); *Alhouse* v. *Commissioner*, T.C. Memo. 1991–652. However, the Internal Revenue Service (IRS) has ruled that a co-ownership does not rise to the level of an entity for Federal tax purposes if the owner employs an agent whose activities are limited to collecting rents, paying property taxes, insurance premiums, repair and maintenance expenses, and providing tenants with customary services. Rev. Rul. 75–374 (1975–2 CB 261). *See also* Rev. Rul. 79–77 (1979–1 CB 448), (*see* § 601.601(d)(2)(ii)(*b*)).

Rev. Proc. 2002–22 (2002–1 CB 733), (*see* § 601.601(d)(2)(ii)(*b*)), specifies the conditions under which the IRS will consider a request for a private letter ruling that an undivided fractional interest in rental real property is not an interest in a business entity under § 301.7701–2(a). A number of factors must be present to obtain a ruling under the revenue procedure, including a limit on the number of co-owners, a requirement that the co-owners not treat the co-ownership as an entity (that is, that the co-ownership may not file a partnership or corporate tax return, conduct business under a common name, execute an agreement identifying any or all of the co-owners as partners, shareholders, or members of a business entity, or otherwise hold itself out as a partnership or other form of business entity), and a requirement that certain rights with respect to the property (including the power to make certain management decisions) must be retained by co-owners. The revenue procedure provides that an organization that is an entity for State law purposes may not be characterized as a co-ownership under the guidance in the revenue procedure.

The courts and the IRS have addressed the Federal tax classification of investment trusts with assets divided among a number of series. In *National Securities Series-Industrial Stocks Series* v. *Commissioner*, 13 T.C. 884 (1949), *acq.*, 1950–1 CB 4, several series that differed only in the nature of their assets were created within a statutory open-end investment trust. Each series regularly issued certificates representing shares in the property held in trust and regularly redeemed the certificates solely from the assets and earnings of the individual series. The Tax Court stated that each series of the trust was taxable as a separate regulated investment company. *See also* Rev. Rul. 55–416 (1955–1 CB 416), (*see* § 601.601(d)(2)(ii)(*b*)). But, *see Union Trusteed Funds* v. *Commissioner*, 8 T.C. 1133 (1947), (series funds organized by a State law corporation could not be treated as if each fund were a separate corporation).

In 1986, Congress added section 851(g) to the Code. Section 851(g) contains a special rule for series funds and provides that, in the case of a regulated investment company (within the meaning of section 851(a)) with more than one fund, each fund generally is treated as a separate corporation. For these purposes, a fund is a segregated portfolio of assets the beneficial

interests in which are owned by holders of interests in the regulated investment company that are preferred over other classes or series with respect to these assets.

*C. Insurance Company Classification*

Section 7701(a)(3) and § 301.7701–2(b)(4) provide that an arrangement that qualifies as an insurance company is a corporation for Federal income tax purposes. Sections 816(a) and 831(c) define an insurance company as any company more than half the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. *See also* § 1.801–3(a)(1), ("[T]hough its name, charter powers, and subjection to State insurance laws are significant in determining the business which a company is authorized and intends to carry on, it is the character of the business actually done in the taxable year which determines whether a company is taxable as an insurance company under the Internal Revenue Code."). Thus, an insurance company includes an arrangement that conducts insurance business, whether or not the arrangement is a State law entity.

**3. Overview of Series LLC Statutes and Cell Company Statutes**

*A. Domestic Statutes*

Although § 301.7701–1(a)(1) provides that State classification of an entity is not controlling for Federal tax purposes, the characteristics of series LLCs and cell companies under their governing statutes are an important factor in analyzing whether series and cells generally should be treated as separate entities for Federal tax purposes.

Series LLC statutes have been enacted in Delaware, Illinois, Iowa, Nevada, Oklahoma, Tennessee, Texas, Utah and Puerto Rico. Delaware enacted the first series LLC statute in 1996. Del. Code Ann. Tit. 6, section 18–215 (the Delaware statute). Statutes enacted subsequently by other States are similar, but not identical, to the Delaware statute. All of the statutes provide a significant degree of separateness for individual series within a series LLC, but none provides series with all of the attributes of a typical State law entity, such as an ordinary limited liability company. Individual series generally are not treated as separate entities for State law purposes. However, in certain States (currently Illinois and Iowa), a series is treated as a separate entity to the extent provided in the series LLC's articles of organization.

The Delaware statute provides that a limited liability company may establish, or provide for the establishment of, one or more designated series of members, managers, LLC interests or assets. Under the Delaware statute, any such series may have separate rights, powers, or duties with respect to specified property or obligations of the LLC or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective. Additionally, the Delaware statute provides that the debts, liabilities, obligations, and expenses of a particular series are enforceable against the assets of that series only, and not against the assets of the series LLC generally or any other series of the LLC, and, unless the LLC agreement provides otherwise, none of the debts, liabilities, obligations, and expenses of the series LLC generally or of any other series of the series LLC are enforceable against the assets of the series, provided that the following requirements are met: (1) The LLC agreement establishes or provides for the establishment of one or more series; (2) records maintained for any such series account for the assets of the series separately from the other assets of the series LLC, or of any other series of the series LLC; (3) the LLC agreement so provides; and (4) notice of the limitation on liabilities of a series is set forth in the series LLC's certificate of formation.

Unless otherwise provided in the LLC agreement, a series established under Delaware law has the power and capacity to, in its own name, contract, hold title to assets, grant liens and security interests, and sue and be sued. A series may be managed by the members of the series or by a manager. Any event that causes a manager to cease to be a manager with respect to a series will not, in itself, cause the manager to cease to be a manager of the LLC or of any other series of the LLC.

Under the Delaware statute, unless the LLC agreement provides otherwise, any event that causes a member to cease to be associated with a series will not, in itself, cause the member to cease to be associated with any other series or with the LLC, or cause termination of the series, even if there are no remaining members of the series. Additionally, the Delaware statute allows a series to be terminated and its affairs wound up without causing the dissolution of the LLC. However, all series of the LLC terminate when the LLC dissolves. Finally, under the Delaware statute, a series generally may not make a distribution to the extent that the distribution will cause the liabilities of the series to exceed the fair market value of the series' assets.

The series LLC statutes of Illinois, 805 ILCS 180/37–40 (the Illinois statute), and Iowa, I.C.A. § 489.1201 (the Iowa statute) provide that a series with limited liability will be treated as a separate entity to the extent set forth in the articles of organization. The Illinois statute provides that the LLC and any of its series may elect to consolidate their operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly, or elect to be treated as a single business for purposes of qualification to do business in Illinois or any other State.

In addition, under the Illinois statute, a series' existence begins upon filing of a certificate of designation with the Illinois secretary of state. A certificate of designation must be filed for each series that is to have limited liability. The name of a series with limited liability must contain the entire name of the LLC and be distinguishable from the names of the other series of the LLC. If different from the LLC, the certificate of designation for each series must list the names of the members if the series is member-managed or the names of the managers if the series is manager-managed. The Iowa and Illinois statutes both provide that, unless modified by the series LLC provisions, the provisions generally applicable to LLCs and their managers, members, and transferees are applicable to each series.

Some States have enacted series provisions outside of LLC statutes. For example, Delaware has enacted series limited partnership provisions (6 Del. C. § 17–218). In addition, Delaware's statutory trust statute permits a statutory trust to establish series (12 Del. C. § 3804). Both of these statutes contain provisions that are nearly identical to the corresponding provisions of the Delaware series LLC statute with respect to the ability of the limited partnership or trust to create or establish separate series with the same liability protection enjoyed by series of a Delaware series LLC.

All of the series LLC statutes contain provisions that grant series certain attributes of separate entities. For example, individual series may have separate business purposes, investment objectives, members, and managers. Assets of a particular series are not subject to the claims of creditors of other series of the series LLC or of the series LLC itself, provided that certain recordkeeping and notice requirements are observed. Finally, most series LLC statutes provide that an event that causes a member to cease to be

associated with a series does not cause the member to cease to be associated with the series LLC or any other series of the series LLC.

However, all of the State statutes limit the powers of series of series LLCs. For example, a series of a series LLC may not convert into another type of entity, merge with another entity, or domesticate in another State independent from the series LLC. Several of the series LLC statutes do not expressly address a series' ability to sue or be sued, hold title to property, or contract in its own name. Ordinary LLCs and series LLCs generally may exercise these rights. Additionally, most of the series LLC statutes provide that the dissolution of a series LLC will cause the termination of each of its series.

*B. Statutes with Respect to Insurance*

The insurance codes of a number of States include statutes that provide for the chartering of a legal entity commonly known as a protected cell company, segregated account company, or segregated portfolio company. *See,* for example, Vt. Stat. Ann. tit. 8, chap.141, §§ 6031–6038 (sponsored captive insurance companies and protected cells of such companies); S.C. Code Ann. tit. 38, chap. 10, §§ 38–10–10 through 39–10–80 (protected cell insurance companies). Under those statutes, as under the series LLC statutes described above, the assets of each cell are segregated from the assets of any other cell. The cell may issue insurance or annuity contracts, reinsure such contracts, or facilitate the securitization of obligations of a sponsoring insurance company. Rev. Rul. 2008–8 (2008–1 CB 340), (*see* § 601.601(d)(2)(ii)(*b*)), analyzes whether an arrangement entered into between a protected cell and its owner possesses the requisite risk shifting and risk distribution to qualify as insurance for Federal income tax purposes. Under certain domestic insurance codes, the sponsor may be organized under a corporate or unincorporated entity statute.

Series or cell company statutes in a number of foreign jurisdictions allow series or cells to engage in insurance businesses. *See,* for example, The Companies (Guernsey) Law, 2008 Part XXVII (Protected Cell Companies), Part XXVIII (Incorporated Cell Companies); The Companies (Jersey) law, 1991, Part 18D; Companies Law, Part XIV (2009 Revision) (Cayman Isl.) (Segregated Portfolio Companies); and Segregated Accounts Companies Act (2000) (Bermuda).

**Explanation of Provisions**

**1. In General**

The proposed regulations provide that, for Federal tax purposes, a domestic series, whether or not a juridical person for local law purposes, is treated as an entity formed under local law.

With one exception, the proposed regulations do not apply to series or cells organized or established under the laws of a foreign jurisdiction. The one exception is that the proposed regulations apply to a foreign series that engages in an insurance business.

Whether a series that is treated as a local law entity under the proposed regulations is recognized as a separate entity for Federal tax purposes is determined under § 301.7701–1 and general tax principles. The proposed regulations further provide that the classification of a series that is recognized as a separate entity for Federal tax purposes is determined under § 301.7701–1(b), which provides the rules for classifying organizations that are recognized as entities for Federal tax purposes.

The proposed regulations define a *series organization* as a juridical entity that establishes and maintains, or under which is established and maintained, a series. A series organization includes a series limited liability company, series partnership, series trust, protected cell company, segregated cell company, segregated portfolio company, or segregated account company.

The proposed regulations define a *series statute* as a statute of a State or foreign jurisdiction that explicitly provides for the organization or establishment of a series of a juridical person and explicitly permits (1) members or participants of a series organization to have rights, powers, or duties with respect to the series; (2) a series to have separate rights, powers, or duties with respect to specified property or obligations; and (3) the segregation of assets and liabilities such that none of the debts and liabilities of the series organization (other than liabilities to the State or foreign jurisdiction related to the organization or operation of the series organization, such as franchise fees or administrative costs) or of any other series of the series organization are enforceable against the assets of a particular series of the series organization. For purposes of this definition, a "participant" of a series organization includes an officer or director of the series organization who has no ownership interest in the series or series organization, but has rights, powers, or duties with respect to the series.

The proposed regulations define a series as a segregated group of assets and liabilities that is established pursuant to a series statute by agreement of a series organization. A series includes a cell, segregated account, or segregated portfolio, including a cell, segregated account, or segregated portfolio that is formed under the insurance code of a jurisdiction or is engaged in an insurance business. However, the term "series" does not include a segregated asset account of a life insurance company, which consists of all assets the investment return and market value of which must be allocated in an identical manner to any variable life insurance or annuity contract invested in any of the assets. *See* § 1.817–5(e). Such an account is accorded special treatment under subchapter L. *See* generally section 817(a) through (c).

Certain series statutes provide that the series liability limitation provisions do not apply if the series organization or series does not maintain records adequately accounting for the assets associated with each series separately from the assets of the series organization or any other series of the series organization. The IRS and the Treasury Department considered whether a failure to elect or qualify for the liability limitations under the series statute should affect whether a series is a separate entity for Federal tax purposes. However, limitations on liability of owners of an entity for debts and obligations of the entity and the rights of creditors to hold owners liable for debts and obligations of the entity generally do not alter the characterization of the entity for Federal tax purposes. Therefore, the proposed regulations provide that an election, agreement, or other arrangement that permits debts and liabilities of other series or the series organization to be enforceable against the assets of a particular series, or a failure to comply with the recordkeeping requirements for the limitation on liability available under the relevant series statute, will not prevent a series from meeting the definition of "series" in the proposed regulations. For example, a series generally will not cease to be an entity under the proposed regulations simply because it guarantees the debt of another series within the series organization.

The proposed regulations treat a series as created or organized under the laws of the same jurisdiction in which the series is established. Because a series may not be a separate juridical entity for local law purposes, this rule

provides the means for establishing the jurisdiction of the series for Federal tax purposes.

Under § 301.7701–1(b), § 301.7701–2(b) applies to a series that is recognized as a separate entity for Federal tax purposes. Therefore, a series that is itself described in § 301.7701–2(b)(1) through (8) would be classified as a corporation regardless of the classification of the series organization.

The proposed regulations also provide that, for Federal tax purposes, ownership of interests in a series and of the assets associated with a series is determined under general tax principles. A series organization is not treated as the owner of a series or of the assets associated with a series merely because the series organization holds legal title to the assets associated with the series. For example, if a series organization holds legal title to assets associated with a series because the statute under which the series organization was organized does not expressly permit a series to hold assets in its own name, the series will be treated as the owner of the assets for Federal tax purposes if it bears the economic benefits and burdens of the assets under general Federal tax principles. Similarly, for Federal tax purposes, the obligor for the liability of a series is determined under general tax principles.

In general, the same legal principles that apply to determine who owns interests in other types of entities apply to determine the ownership of interests in series and series organizations. These principles generally look to who bears the economic benefits and burdens of ownership. *See,* for example, Rev. Rul. 55–39 (1955–1 CB 403), (*see* § 601.601(d)(2)(ii)(*b*)). Furthermore, common law principles apply to the determination of whether a person is a partner in a series that is classified as a partnership for Federal tax purposes under § 301.7701–3. *See,* for example, *Commissioner* v. *Culbertson,* 337 U.S. 733 (1949); *Commissioner* v. *Tower,* 327 U.S. 280 (1946).

The IRS and the Treasury Department considered other approaches to the classification of series for Federal tax purposes. In particular, the IRS and the Treasury Department considered whether series should be disregarded as entities separate from the series organization for Federal tax purposes. This approach would be supported by the fact that series are not generally considered entities for local law purposes (except, for example, potentially under the statutes of Illinois and Iowa, where a series may be treated as a separate entity to the extent set forth in the articles of organization). Additionally, while the statutes enabling series organizations grant series significant autonomy, under no current statute do series possess all of the attributes of independence that entities recognized under local law generally possess. For example, series generally cannot convert into another type of entity, merge with another entity, or domesticate in another jurisdiction independent of the series organization. In addition, the dissolution of a series organization generally will terminate all of its series.

The IRS and the Treasury Department believe that, notwithstanding that series differ in some respects from more traditional local law entities, domestic series generally should be treated for Federal tax purposes as entities formed under local law. Because Federal tax law, and not local law, governs the question of whether an organization is an entity for Federal tax purposes, it is not dispositive that domestic series generally are not considered entities for local law purposes. Additionally, the IRS and the Treasury Department believe that, overall, the factors supporting separate entity status for series outweigh the factors in favor of disregarding series as entities separate from the series organization and other series of the series organization. Specifically, managers and equity holders are "associated with" a series, and their rights, duties, and powers with respect to the series are direct and specifically identified. Also, individual series may (but generally are not required to) have separate business purposes and investment objectives. The IRS and the Treasury Department believe these factors are sufficient to treat domestic series as entities formed under local law.

Although some statutes creating series organizations permit an individual series to enter into contracts, sue, be sued, and/or hold property in its own name, the IRS and the Treasury Department do not believe that the failure of a statute to explicitly provide these rights should alter the treatment of a domestic series as an entity formed under local law. These attributes primarily involve procedural formalities and do not appear to affect the substantive economic rights of series or their creditors with respect to their property and liabilities. Even in jurisdictions where series may not possess these attributes, the statutory liability shields would still apply to the assets of a particular series, provided the statutory requirements are satisfied.

Furthermore, the rule provided in the proposed regulations would provide greater certainty to both taxpayers and the IRS regarding the tax status of domestic series and foreign series that conduct insurance businesses. In effect, taxpayers that establish domestic series are placed in the same position as persons that file a certificate of organization for a State law entity. The IRS and the Treasury Department believe that the approach of the proposed regulations is straightforward and administrable, and is preferable to engaging in a case-by-case determination of the status of each series that would require a detailed examination of the terms of the relevant statute. Finally, the IRS and the Treasury Department believe that a rule generally treating domestic series as local law entities would be consistent with taxpayers' current ability to create similar structures using multiple local law entities that can elect their Federal tax classification pursuant to § 301.7701–3.

The IRS and the Treasury Department believe that domestic series should be classified as separate local law entities based on the characteristics granted to them under the various series statutes. However, except as specifically stated in the proposed regulations, a particular series need not actually possess all of the attributes that its enabling statute permits it to possess. The IRS and the Treasury Department believe that a domestic series should be treated as a separate local law entity even if its business purpose, investment objective, or ownership overlaps with that of other series or the series organization itself. Separate State law entities may have common or overlapping business purposes, investment objectives and ownership, but generally are still treated as separate local law entities for Federal tax purposes.

The proposed regulations do not address the entity status for Federal tax purposes of a series organization. Specifically, the proposed regulations do not address whether a series organization is recognized as a separate entity for Federal tax purposes if it has no assets and engages in no activities independent of its series.

Until further guidance is issued, the entity status of a foreign series that does not conduct an insurance business will be determined under applicable law. Foreign series raise novel Federal income tax issues that continue to be considered and addressed by the IRS and the Treasury Department.

**2. Classification of a Series That Is Treated as a Separate Entity for Federal Tax Purposes**

If a domestic series or a foreign series engaged in an insurance business is treated as a separate entity for Federal tax purposes, then § 301.7701–1(b) applies to determine the proper tax classification of the series. However, the proposed regulations do not provide how a series should be treated for Federal employment tax purposes. If a domestic series is treated as a separate entity for Federal tax purposes, then the series generally is subject to the same treatment as any other entity for Federal tax purposes. For example, a series that is treated as a separate entity for Federal tax purposes may make any Federal tax elections it is otherwise eligible to make independently of other series or the series organization itself, and regardless of whether other series (or the series organization) do not make certain elections or make different elections.

**3. Entity Status of Series Organizations**

The proposed regulations do not address the entity status or filing requirements of series organizations for Federal tax purposes. A series organization generally is an entity for local law purposes. An organization that is an entity for local law purposes generally is treated as an entity for Federal tax purposes. However, an organization characterized as an entity for Federal income tax purposes may not have an income or information tax filing obligation. For example, § 301.6031(a)–(1)(a)(3)(i) provides that a partnership with no income, deductions, or credits for Federal income tax purposes for a taxable year is not required to file a partnership return for that year. Generally, filing fees of a series organization paid by series of the series organization would be treated as expenses of the series and not as expenses of the series organization. Thus, a series organization characterized as a partnership for Federal tax purposes that does not have income, deductions, or credits for a taxable year need not file a partnership return for the year.

**4. Continuing Applicability of Tax Law Authority to Series**

Notwithstanding that a domestic series or a foreign series engaged in an insurance business is treated as an entity formed under local law under the proposed regulations, the Commissioner may under applicable law, including common law tax principles, characterize a series or a portion of a series other than as a separate entity for Federal tax purposes. Series covered by the proposed regulations are subject to applicable law to the same extent as other entities. Thus, a series may be disregarded under applicable law even if it satisfies the requirements of the proposed regulations to be treated as an entity formed under local law. For example, if a series has no business purpose or business activity other than tax avoidance, it may be disregarded under appropriate circumstances. *See Bertoli* v. *Commissioner,* 103 T.C. 501 (1994); *Aldon Homes, Inc.* v. *Commissioner,* 33 T.C. 582 (1959). Furthermore, the anti-abuse rule of § 1.701–2 is applicable to a series or series organization that is classified as a partnership for Federal tax purposes.

**5. Applicability to Organizations That Qualify as Insurance Companies**

Notice 2008–19 requested comments on proposed guidance setting forth conditions under which a cell of a protected cell company would be treated as an insurance company separate from any other entity for Federal income tax purposes. Those who commented on the notice generally supported the proposed guidance, and further commented that it should extend to non-insurance arrangements as well, including series LLCs. Rather than provide independent guidance for insurance company status setting forth what is essentially the same standard, the proposed regulations define the term *series* to include a cell, segregated account, or segregated portfolio that is formed under the insurance code of a jurisdiction or is engaged in an insurance business (other than a segregated asset account of a life insurance company).

Although the proposed regulations do not apply to a series organized or established under the laws of a foreign jurisdiction, an exception is provided for certain series conducting an insurance business. Under this exception, a series that is organized or established under the laws of a foreign jurisdiction is treated as an entity if the arrangements and other activities of the series, if conducted by a domestic company, would result in its being classified as an insurance company. Thus, a foreign series would be treated as an entity if more than half of the series' business is the issuing or reinsuring of insurance or annuity contracts. The IRS and the Treasury Department believe it is appropriate to provide this rule even though the proposed regulations otherwise do not apply to a foreign series because an insurance company is classified as a per se corporation under section 7701(a)(3) regardless of how it otherwise would be treated under §§ 301.7701–1, 301.7701–2, or 301.7701–3.

The IRS and the Treasury Department are aware that insurance-specific guidance may still be needed to address the issues identified in § 3.02 of Notice 2008–19 and insurance-specific transition issues that may arise for protected cell companies that previously reported in a manner inconsistent with the regulations. *See* § 601.601(d)(2)(ii)(*b*).

**6. Effect of Local Law Classification on Tax Collection**

The IRS and Treasury Department understand that there are differences in local law governing series (for example, rights to hold title to property and to sue and be sued are expressly addressed in some statutes but not in others) that may affect how creditors of series, including State taxing authorities, may enforce obligations of a series. Thus, the proposed regulations provide that, to the extent Federal or local law permits a creditor to collect a liability attributable to a series from the series organization or other series of the series organization, the series organization and other series of the series organization may also be considered the taxpayer from whom the tax assessed against the series may be collected pursuant to administrative or judicial means. Further, when a creditor is permitted to collect a liability attributable to a series organization from any series of the series organization, a tax liability assessed against the series organization may be collected directly from a series of the series organization by administrative or judicial means.

**7. Employment Tax and Employee Benefits Issues**

*A. In General*

The domestic statutes authorizing the creation of series contemplate that a series may operate a business. If the operating business has workers, it will be necessary to determine how the business satisfies any employment tax obligations, whether it has the ability to maintain any employee benefit plans and, if so, whether it complies with the rules applicable to those plans. Application of the employment tax requirements will depend principally on whether the workers are employees, and, if so, who is considered the employer for Federal income and employment tax purposes. In general, an employment relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the

services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. *See* §§ 31.3121(d)–1(c)(2), 31.3306(i)–1(b), and 31.3401(c)– 1(b).

*B. Employment Tax*

An entity must be a person in order to be an employer for Federal employment tax purposes. *See* sections 3121(b), 3306(a)(1), 3306(c), and 3401(d) and § 31.3121(d)–2(a). However, status as a person, by itself, is not enough to make an entity an employer for Federal employment tax purposes. The entity must also satisfy the criteria to be an employer under Federal employment tax statutes and regulations for purposes of the determination of the proper amount of employment taxes and the party liable for reporting and paying the taxes. Treatment of a series as a separate person for Federal employment tax purposes would create the possibility that the series could be an "employer" for Federal employment tax purposes, which would raise both substantive and administrative issues.

The series structure would make it difficult to determine whether the series or the series organization is the employer under the relevant criteria with respect to the services provided. For example, if workers perform all of their services under the direction and control of individuals who own the interests in a series, but the series has no legal authority to enter into contracts or to sue or be sued, could the series nonetheless be the employer of the workers? If workers perform services under the direction and control of the series, but they are paid by the series organization, would the series organization, as the nominal owner of all the series assets, have control over the payment of wages such that it would be liable as the employer under section 3401(d)?

The structure of a series organization could also affect the type of employment tax liability. For example, if a series were recognized as a distinct person for Federal employment tax purposes, a worker providing services as an employee of one series and as a member of another series or the series organization would be subject to FICA tax on the wages paid for services as an employee and self-employment tax on the member income. Note further that, if a domestic series were classified as a separate entity that is a business entity, then, under § 301.7701–3, the series would be classified as either a partnership or a corporation. While a business entity with one owner is generally classified as a corporation or is disregarded for Federal tax purposes, such an entity cannot be disregarded for Federal employment tax purposes. *See* § 301.7701–2(c)(2)(iv).

Once the employer is identified, additional issues arise, including but not limited to the following: How would the wage base be determined for employees, particularly if they work for more than one series in a common line of business? How would the common paymaster rules apply? Who would be authorized to designate an agent under section 3504 for reporting and payment of employment taxes, and how would the authorization be accomplished? How would the statutory exceptions from the definitions of employment and wages apply given that they may be based on the identity of the employer? Which entity would be eligible for tax credits that go to the employer such as the Work Opportunity Tax Credit under section 51 or the tip credit under section 45B? If a series organization handles payroll for a series and is also the nominal owner of the series assets, would the owners or the managers of the series organization be responsible persons for the Trust Fund Recovery Penalty under section 6672?

Special administrative issues might arise if the series were to be treated as the employer for Federal employment tax purposes but not for State law purposes. For example, if the series were the employer for Federal employment tax purposes and filed a Form W–2, "Wage and Tax Statement," reporting wages and employment taxes withheld, but the series were not recognized as a juridical person for State law purposes, then administrative problems might ensue unless separate Forms W–2 were prepared for State and local tax purposes. Similarly, the IRS and the States might encounter challenges in awarding the FUTA credit under section 3302 to the appropriate entity and certifying the amount of State unemployment tax paid.

In light of these issues, the proposed regulations do not currently provide how a series should be treated for Federal employment tax purposes.

*C. Employee Benefits*

Various issues arise with respect to the ability of a series to maintain an employee benefit plan, including issues related to those described above with respect to whether a series may be an employer. The proposed regulations do not address these issues. However, to the extent that a series can maintain an employee benefit plan, the aggregation rules under section 414(b), (c), (m), (o) and (t), as well as the leased employee rules under section 414(n), would apply. In this connection, the IRS and Treasury Department expect to issue regulations under section 414(o) that would prevent the avoidance of any employee benefit plan requirement through the use of the separate entity status of a series.

**8. Statement Containing Identifying Information About Series**

As the series organization or a series of the series organization may be treated as a separate entity for Federal tax and related reporting purposes but may not be a separate entity under local law, the IRS and Treasury Department believe that a new statement may need to be created and required to be filed annually by the series organization and each series of the series organization to provide the IRS with certain identifying information to ensure the proper assessment and collection of tax. Accordingly, these regulations propose to amend the Procedure and Administration Regulations under section 6011 to include this requirement and a cross-reference to those regulations is included under § 301.7701–1. The IRS and Treasury Department are considering what information should be required by these statements. Information tentatively being considered includes (1) the name, address, and taxpayer identification number of the series organization and each of its series and status of each as a series of a series organization or as the series organization; (2) the jurisdiction in which the series organization was formed; and (3) an indication of whether the series holds title to its assets or whether title is held by another series or the series organization and, if held by another series or the series organization, the name, address, and taxpayer identification number of the series organization and each series holding title to any of its assets. The IRS and Treasury Department are also considering the best time to require taxpayers to file the statement. For example, the IRS and Treasury Department are considering whether the statement should be filed when returns, such as income tax returns and excise tax returns, are required to be filed or whether it should be a stand-alone statement filed separately by a set date each year, as with information returns such as Forms 1099. A cross-reference to these regulations was added to the Procedure and Administration regulations under section 6071 for the time to file returns and statements. The proposed regulations under section 6071 provide that the statement will be a stand-alone statement due March 15th of each year. In addition, the IRS and

Treasury Department are considering revising Form SS–4, "Application for Employer Identification Number," to include questions regarding series organizations.

**Proposed Effective Date**

These regulations generally apply on the date final regulations are published in the **Federal Register**. Generally, when final regulations become effective, taxpayers that are treating series differently for Federal tax purposes than series are treated under the final regulations will be required to change their treatment of series. In this situation, a series organization that previously was treated as one entity with all of its series may be required to begin treating each series as a separate entity for Federal tax purposes. General tax principles will apply to determine the consequences of the conversion from one entity to multiple entities for Federal tax purposes. *See,* for example, section 708 for rules relating to partnership divisions in the case of a series organization previously treated as a partnership for Federal tax purposes converting into multiple partnerships upon recognition of the series organization's series as separate entities. While a division of a partnership may be tax-free, gain may be recognized in certain situations under section 704(c)(1)(B) or section 737. Sections 355 and 368(a)(1)(D) provide rules that govern certain divisions of a corporation. The division of a series organization into multiple corporations may be tax-free to the corporation and to its shareholders; however, if the corporate division does not satisfy one or more of the requirements in section 355, the division may result in taxable events to the corporation, its shareholders, or both.

The regulations include an exception for series established prior to publication of the proposed regulations that treat all series and the series organization as one entity. If the requirements for this exception are satisfied, after issuance of the final regulations the series may continue to be treated together with the series organization as one entity for Federal tax purposes. Specifically, these requirements are satisfied if (1) The series was established prior to September 14, 2010; (2) The series (independent of the series organization or other series of the series organization) conducted business or investment activity or, in the case of a foreign series, more than half the business of the series was the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies, on and prior to September 14, 2010; (3) If the series was established pursuant to a foreign statute, the series' classification was relevant (as defined in § 301.7701–3(d)), and more than half the business of the series was the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies for all taxable years beginning with the taxable year that includes September 14, 2010; (4) No owner of the series treats the series as an entity separate from any other series of the series organization or from the series organization for purposes of filing any Federal income tax returns, information returns, or withholding documents for any taxable year; (5) The series and series organization had a reasonable basis (within the meaning of section 6662) for their claimed classification; and (6) Neither the series nor any owner of the series nor the series organization was notified in writing on or before the date final regulations are published in the **Federal Register** that classification of the series was under examination (in which case the series' classification will be determined in the examination).

This exception will cease to apply on the date any person or persons who were not owners of the series organization (or series) prior to September 14, 2010 own, in the aggregate, a 50 percent or greater interest in the series organization (or series). For this purpose, the term *interest* means (i) in the case of a partnership, a capital or profits interest and (ii) in the case of a corporation, an equity interest measured by vote or value. This transition rule does not apply to any determination other than the entity status of a series, for example, tax ownership of a series or series organization or qualification of a series or series organization conducting an insurance business as a controlled foreign corporation.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. The regulations require that series and series organizations file a statement to provide the IRS with certain identifying information to ensure the proper assessment and collection of tax. The regulations affect domestic series LLCs, domestic cell companies, and foreign series and cells that conduct insurance businesses, and their owners. Based on information available at this time, the IRS and the Treasury Department believe that many series and series organizations are large insurance companies or investment firms and, thus, are not small entities. Although a number of small entities may be subject to the information reporting requirement of the new statement, any economic impact will be minimal. The information that the IRS and the Treasury Department are considering requiring on the proposed statement should be known by or readily available to the series or the series organization. Therefore, it should take minimal time and expense to collect and report this information. For example, the IRS and the Treasury Department are considering requiring the following information: (1) The name, address, and taxpayer identification number of the series organization and each of its series and status of each as a series of a series organization or as the series organization; (2) The jurisdiction in which the series organization was formed; and (3) An indication of whether the series holds title to its assets or whether title is held by another series or the series organization and, if held by another series or the series organization, the name, address, and taxpayer identification number of the series organization and each series holding title to any of its assets. The IRS and the Treasury Department request comments on the accuracy of the statement that the regulations in this document will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically directly to the Federal eRulemaking portal at *http://www.regulations.gov.*

The IRS and the Treasury Department request comments on the proposed

regulations. In addition, the IRS and the Treasury Department request comments on the following issues:

(1) Whether a series organization should be recognized as a separate entity for Federal tax purposes if it has no assets and engages in no activities independent of its series;

(2) The appropriate treatment of a series that does not terminate for local law purposes when it has no members associated with it;

(3) The entity status for Federal tax purposes of foreign cells that do not conduct insurance businesses and other tax consequences of establishing, operating, and terminating all foreign cells;

(4) How the Federal employment tax issues discussed and similar technical issues should be resolved;

(5) How series and series organizations will be treated for State employment tax purposes and other state employment-related purposes and how that treatment should affect the Federal employment tax treatment of series and series organizations (comments from the states would be particularly helpful);

(6) What issues could arise with respect to the provision of employee benefits by a series organization or series; and

(7) The requirement for the series organization and each series of the series organization to file a statement and what information should be included on the statement.

All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Joy Spies, IRS Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 301.6011–6 also issued under 26 U.S.C. 6011(a). * * *

Section 301.6071–2 also issued under 26 U.S.C. 6071(a). * * *

**Par. 2.** Section 301.6011–6 is added to read as follows:

### § 301.6011–6 Statements of series and series organizations.

(a) *Statement required.* Each series and series organization (as defined in paragraph (b) of this section) shall file a statement for each taxable year containing the identifying information with respect to the series or series organization as prescribed by the Internal Revenue Service for this purpose and shall include the information required by the statement and its instructions.

(b) *Definitions*—(1) *Series.* The term *series* has the same meaning as in § 301.7701–1(a)(5)(viii)(C).

(2) *Series organization.* The term *series organization* has the same meaning as in § 301.7701–1(a)(5)(viii)(A).

(c) *Effective/applicability date.* This section applies to taxable years beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

**Par. 3.** Section 301.6071–2 is added to read as follows:

### § 301.6071–2 Time for filing statements of series and series organizations.

(a) *In general.* Statements required by § 301.6011–6 must be filed on or before March 15 of the year following the period for which the return is made.

(b) *Effective/applicability date.* This section applies to taxable years beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

**Par. 4.** Section 301.7701–1 is amended by:

1. Adding paragraph (a)(5).

2. Revising paragraphs (e) and (f).

The additions and revisions read as follows:

### § 301.7701–1 Classification of organizations for Federal tax purposes.

(a) * * *

(5) *Series and series organizations*—(i) *Entity status of a domestic series.* For Federal tax purposes, except as provided in paragraph (a)(5)(ix) of this section, a series (as defined in paragraph (a)(5)(viii)(C) of this section) organized or established under the laws of the United States or of any State, whether or not a juridical person for local law purposes, is treated as an entity formed under local law.

(ii) *Certain foreign series conducting an insurance business.* For Federal tax purposes, except as provided in paragraph (a)(5)(ix) of this section, a series organized or established under the laws of a foreign jurisdiction is treated as an entity formed under local law if the arrangements and other activities of the series, if conducted by a domestic company, would result in classification as an insurance company within the meaning of section 816(a) or section 831(c).

(iii) *Recognition of entity status.* Whether a series that is treated as a local law entity under paragraph (a)(5)(i) or (ii) of this section is recognized as a separate entity for Federal tax purposes is determined under this section and general tax principles.

(iv) *Classification of series.* The classification of a series that is recognized as a separate entity for Federal tax purposes is determined under paragraph (b) of this section.

(v) *Jurisdiction in which series is organized or established.* A series is treated as created or organized under the laws of a State or foreign jurisdiction if the series is established under the laws of such jurisdiction. *See* § 301.7701–5 for rules that determine whether a business entity is domestic or foreign.

(vi) *Ownership of series and the assets of series.* For Federal tax purposes, the ownership of interests in a series and of the assets associated with a series is determined under general tax principles. A series organization is not treated as the owner for Federal tax purposes of a series or of the assets associated with a series merely because the series organization holds legal title to the assets associated with the series.

(vii) *Effect of Federal and local law treatment.* To the extent that, pursuant to the provisions of this paragraph (a)(5), a series is a taxpayer against whom tax may be assessed under Chapter 63 of Title 26, then any tax assessed against the series may be collected by the Internal Revenue Service from the series in the same manner the assessment could be collected by the Internal Revenue Service from any other taxpayer. In addition, to the extent Federal or local law permits a debt attributable to the series to be collected from the series organization or other series of the series organization, then, notwithstanding any

other provision of this paragraph (a)(5), and consistent with the provisions of Federal or local law, the series organization and other series of the series organization may also be considered the taxpayer from whom the tax assessed against the series may be administratively or judicially collected. Further, when a creditor is permitted to collect a liability attributable to a series organization from any series of the series organization, a tax liability assessed against the series organization may be collected directly from a series of the series organization by administrative or judicial means.

(viii) *Definitions*—(A) *Series organization.* A *series organization* is a juridical entity that establishes and maintains, or under which is established and maintained, a series (as defined in paragraph (a)(5)(viii)(C) of this section). A series organization includes a series limited liability company, series partnership, series trust, protected cell company, segregated cell company, segregated portfolio company, or segregated account company.

(B) *Series statute.* A *series statute* is a statute of a State or foreign jurisdiction that explicitly provides for the organization or establishment of a series of a juridical person and explicitly permits—

(*1*) Members or participants of a series organization to have rights, powers, or duties with respect to the series;

(*2*) A series to have separate rights, powers, or duties with respect to specified property or obligations; and

(*3*) The segregation of assets and liabilities such that none of the debts and liabilities of the series organization (other than liabilities to the State or foreign jurisdiction related to the organization or operation of the series organization, such as franchise fees or administrative costs) or of any other series of the series organization are enforceable against the assets of a particular series of the series organization.

(C) *Series.* A *series* is a segregated group of assets and liabilities that is established pursuant to a series statute (as defined in paragraph (a)(5)(viii)(B) of this section) by agreement of a series organization (as defined in paragraph (a)(5)(viii)(A) of this section). A series includes a series, cell, segregated account, or segregated portfolio, including a cell, segregated account, or segregated portfolio that is formed under the insurance code of a jurisdiction or is engaged in an insurance business. However, the term *series* does not include a segregated asset account of a life insurance company. *See* section 817(d)(1); § 1.817–5(e). An election, agreement, or other arrangement that permits debts and liabilities of other series or the series organization to be enforceable against the assets of a particular series, or a failure to comply with the record keeping requirements for the limitation on liability available under the relevant series statute, will be disregarded for purposes of this paragraph (a)(5)(viii)(C).

(ix) *Treatment of series and series organizations under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24 and 25 of the Internal Revenue Code).* [Reserved.]

(x) *Examples.* The following examples illustrate the principles of this paragraph (a)(5):

*Example 1. Domestic Series LLC.* (i) *Facts.* Series LLC is a series organization (within the meaning of paragraph (a)(5)(viii)(A) of this section). Series LLC has three members (1, 2, and 3). Series LLC establishes two series (A and B) pursuant to the LLC statute of state Y, a series statute within the meaning of paragraph (a)(5)(viii)(B) of this section. Under general tax principles, Members 1 and 2 are the owners of Series A, and Member 3 is the owner of Series B. Series A and B are not described in § 301.7701–2(b) or paragraph (a)(3) of this section and are not trusts within the meaning of § 301.7701–4.

(ii) *Analysis.* Under paragraph (a)(5)(i) of this section, Series A and Series B are each treated as an entity formed under local law. The classification of Series A and Series B is determined under paragraph (b) of this section. The default classification under § 301.7701–3 of Series A is a partnership and of Series B is a disregarded entity.

*Example 2. Foreign Insurance Cell.* (i) *Facts.* Insurance CellCo is a series organization (within the meaning of paragraph (a)(5)(viii)(A) of this section) organized under the laws of foreign Country X. Insurance CellCo has established one cell, Cell A, pursuant to a Country X law that is a series statute (within the meaning of paragraph (a)(5)(viii)(B) of this section). More than half the business of Cell A during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. If the activities of Cell A were conducted by a domestic company, that company would qualify as an insurance company within the meaning of sections 816(a) and 831(c).

(ii) *Analysis.* Under paragraph (a)(5)(ii) of this section, Cell A is treated as an entity formed under local law. Because Cell A is an insurance company, it is classified as a corporation under § 301.7701–2(b)(4).

* * * * *

(e) *State.* For purposes of this section and §§ 301.7701–2 and 301.7701–4, the term *State* includes the District of Columbia.

(f) *Effective/applicability dates*—(1) *In general.* Except as provided in paragraphs (f)(2) and (f)(3) of this section, the rules of this section are applicable as of January 1, 1997.

(2) *Cost sharing arrangements.* The rules of paragraph (c) of this section are applicable on January 5, 2009.

(3) *Series and series organizations*—(i) *In general.* Except as otherwise provided in this paragraph (f)(3), paragraph (a)(5) of this section applies on and after the date final regulations are published in the **Federal Register**.

(ii) *Transition rule*—(A) *In general.* Except as provided in paragraph (f)(3)(ii)(B) of this section, a taxpayer's treatment of a series in a manner inconsistent with the final regulations will be respected on and after the date final regulations are published in the **Federal Register**, provided that—

(*1*) The series was established prior to September 14, 2010;

(*2*) The series (independent of the series organization or other series of the series organization) conducted business or investment activity, or, in the case of a series established pursuant to a foreign statute, more than half the business of the series was the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies, on and prior to September 14, 2010.

(*3*) If the series was established pursuant to a foreign statute, the series' classification was relevant (as defined in § 301.7701–3(d)), and more than half the business of the series was the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies for all taxable years beginning with the taxable year that includes September 14, 2010;

(*4*) No owner of the series treats the series as an entity separate from any other series of the series organization or from the series organization for purposes of filing any Federal income tax returns, information returns, or withholding documents in any taxable year;

(*5*) The series and series organization had a reasonable basis (within the meaning of section 6662) for their claimed classification; and

(*6*) Neither the series nor any owner of the series nor the series organization was notified in writing on or before the date final regulations are published in the **Federal Register** that classification of the series was under examination (in which case the series' classification will be determined in the examination).

(B) *Exception to transition rule.* Paragraph (f)(3)(ii)(A) of this section

will not apply on and after the date any person or persons who were not owners of the series organization (or series) prior to September 14, 2010 own, in the aggregate, a fifty percent or greater interest in the series organization (or series). For purposes of the preceding sentence, the term *interest* means—

(*1*) In the case of a partnership, a capital or profits interest; and

(*2*) In the case of a corporation, an equity interest measured by vote or value.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2010–22793 Filed 9–13–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 167

**[Docket No. USCG–2009–0765]**

## Port Access Route Study: In the Approaches to Los Angeles-Long Beach and in the Santa Barbara Channel

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of public meetings; request for comments.

**SUMMARY:** The Coast Guard announces two separate public meetings to receive comments on the study entitled "Port Access Route Study: In the Approaches to Los Angeles-Long Beach and in the Santa Barbara Channel" that was published in the **Federal Register** on Wednesday, April 7, 2010. As stated in that document, the Coast Guard is conducting a Port Access Route Study (PARS) to evaluate the continued applicability of and the potential need for modifications to the current vessel routing in the approaches to Los Angeles-Long Beach and in the Santa Barbara Channel.

**DATES:** Public meetings will be held on Wednesday, October 13, 2010 from 7 p.m. to 9 p.m., and on Thursday, October 14, 2010 from 7 p.m. to 9 p.m. to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at the meetings.

**ADDRESSES:** The October 13, 2010 public meeting will be held at Oxnard Harbor District Offices at 333 Ponoma Street in Port Hueneme, CA. Visitor parking is available in the adjacent parking lot. The October 14, 2010 public meeting will be held at the Port of Los Angeles Administration Building at 425 S. Palos Verdes St., San Pedro, CA 90731. Visitor parking is available in the Liberty Hill Plaza parking lot directly across the street from the Port of Los Angeles Administration Building. Government-issued photo identification will be required for entrance into both buildings.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning the meeting or the study, please call or e-mail LTJG Lucas Mancini, Coast Guard; telephone 510–437–3801, e-mail *Lucas.W.Mancini@uscg.mil.* If you have questions on viewing the docket call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

We published a notice of study in the **Federal Register** on April 7, 2010 (75 FR 17562), entitled "Port Access Route Study: In the Approaches to Los Angeles-Long Beach and In the Santa Barbara Channel" in which we did not state a plan to hold a public meeting. We received several requests for a meeting in comments submitted to the docket and have concluded that a public meeting would aid this study. Therefore, we are publishing this notice.

In the notice of PARS, we discussed increased vessel traffic observed bypassing the Santa Barbara Channel Traffic Separation Scheme (TSS) and opting for routes south of San Miguel, Santa Rosa, and Santa Cruz Islands approaching the San Pedro Channel. This study will assess whether the creation of a vessel routing system is necessary to increase the predictability of vessel movements, which may decrease the potential for collisions, oil spills, and other events that could threaten the marine environment.

You may view the notice of PARS in our online docket, in addition to comments submitted thus far by going to *http://www.regulations.gov.* Once there, insert "USCG–2009–0765" in the "Keyword" box and click "Search." If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this study by submitting comments at the meeting either orally or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be posted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

### Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LTJG Lucas Mancini at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

### Public Meeting

The Coast Guard will hold public meetings regarding its Port Access Route Study In the Approaches to Los Angeles-Long Beach and In the Santa Barbara Channel proposed rule on Wednesday, October 13, 2010 from 7 p.m. to 9 p.m. at the Oxnard Harbor District Offices and Thursday, October 14, 2010 from 7 p.m. to 9 p.m. in the 2nd floor board room at the Port of Los Angeles Administration Building, telephone (310) SEA–PORT (732–7668). Government-issued photo identification (for example, a driver's license or TWIC) will be required for entrance into both buildings. We will provide a written summary of the meeting and additional comments received at the meeting in the docket.

Dated: September 2, 2010.

**S.P. Metruck,**

*Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.*

[FR Doc. 2010–22799 Filed 9–13–10; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 200**

**RIN 0596–AC89**

## Enhancing Policies Relating to Partnerships

**AGENCY:** Forest Service, USDA.

**ACTION:** Advance notice of proposed rule making; request for comment.

**SUMMARY:** The Forest Service is proposing to establish an internal directive at Forest Service Handbook (FSH) 1509.14 that would enhance policies related to partnerships. We invite public comment on assessing what changes or additions are needed relating to the Agency's use of partnership arrangements in carrying out our mission. These comments will be considered in developing the proposed directive.

**DATES:** Comments must be received in writing by November 15, 2010.

**ADDRESSES:** Written comments concerning this notice should be addressed to Forest Service, USDA, Attn: Director, National Partnership Office, Joe Meade, Mailstop 1158, 1400 Independence Ave., SW., Washington, DC, 20250–1125.

Comments may also be sent via e-mail to *abloucks@fs.fed.us,* or by the electronic process available at Federal e-Rulemaking portal at *http://www.regulations.gov.*

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 201 14th Street, SW., Room 3NE, Washington, DC 20250. Visitors are encouraged to call ahead 202–205–1055 to facilitate entrance into the building.

**FOR FURTHER INFORMATION CONTACT:** Andrea Bedell-Loucks, Deputy Director, National Partnership Office, 202–205–8336 or *abloucks@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

### Background and Need for the Proposed Directive

Strong partnerships are vital to the Forest Service's mission, and by ensuring clear guidance on the use of such arrangements, the Forest Service will be better able to promote their use.

Throughout its 100-year history, the Forest Service has utilized partnership arrangements with States, Tribes, non-governmental organizations, and others to help carry out the motto "Caring for the Land and Serving People." These arrangements are used in a variety of ways to support Forest Service programs on Federal, State, Tribal and private lands, including ecological restoration and enhancement, interpretation and educational services, enhancement of recreation opportunities, and wildlife habitat improvements. These programs readily provide a spectrum of benefits to the Forest Service, its partners, and the public and may include various instruments to formalize relationships, including grants, contracts or "mutual benefit" agreements.

A number of statutory authorities govern how and when the Forest Service may work cooperatively with partners, such as the Cooperative Funds Act, Cooperative Funds and Deposits Act, Cooperative Forestry Assistance Act, Granger-Thye Act, Federal Grants and Cooperative Agreements Act, and Public Law 105–277, Section 323 as amended by Public Law 111–11, Section 3001, Watershed Restoration and Enhancement Agreements. (For more background on the Forest Service's use of partnership arrangements, readers are referred to the *Partnership Guide, http://www.partnershipresourcecenter.org/resources/partnership-guide/Partnership-Guide.pdf*).

Establishing partnerships and utilizing them to their greatest potential has not always been a simple matter for the Forest Service and its partners. Challenges have resulted, in part, from the multiplicity of partnership authorities, varying interpretation of these authorities, and time-consuming processes for consummating partnership agreements. To address such challenges, the Forest Service has taken a number of steps in recent years, including creating an internal task force, to identify barriers to partnership utilization, establishing the National Partnership Office, and developing various legislative proposals.

In 2007, the Forest Service embarked on an initiative to institute needed modifications to Agency policy intended to reduce barriers to partnership arrangements. An essential part of this initiative was the review of a number of policy issues raised over the years by those inside and outside the Forest Service that impede effective use of partnerships. Based on that review, these issues fall into several broad categories: Administrative processes; interpretation of legal authorities; accountability and reporting; human resources and ethics; and funding.

### Public Input Requested On Policy Needs

The Forest Service is requesting public input with respect to Agency policy. Our intent with the issuance of this notice is to consider such input and, as appropriate, incorporate it in developing this policy. Certain suggestions, whether due to legislative or other limitations, may not be implemented through Agency policy, and we wish for the public to understand that as well.

The Forest Service is especially interested in receiving input to the following questions:

1. *Purposes served by partnership arrangements:* What should be the purpose(s) of partnership arrangements between the Forest Service and State, Tribal, non-governmental, or other organizations or individuals? Where can or should partnerships have the greatest impact in the future, and toward what ends?

2. *Essential characteristics of partnerships:* When the Forest Service and a partner work together, what are the essential characteristics that are needed in that relationship to lead to a successful outcome? In what ways does Agency guidance regarding the essential characteristics of the partnership relationship need clarification?

3. *Reaching new partners:* As the Nation's demographics change, the people served by the Forest Service are becoming increasingly diverse. The Agency wants to reflect this diversity in its partnership activities. We are interested in hearing from the public about: (a) Which potential partners are under-represented and under-served; (b) what kinds of work are these individuals or organizations involved in; (c) how engaging these partners will be beneficial; and (d) how the Forest Service can better access and communicate with under-represented and under-served groups.

4. *Partner recognition and sponsorship:* Increasingly, non-governmental organizations and individuals are expressing interest in working with the Forest Service to improve the condition of our environment, including our Nation's forests. The Forest Service is able to work with many of these organizations directly, as well as indirectly through established non-profits (for example, the National Forest Foundation and others). As a Federal agency, there are limitations on how we work with and recognize particular partners (for

example, signage, plaques, media and communication). What are the appropriate ways the Forest Service should recognize our partners, both non-profit and for-profit?

**Conclusion**

The Forest Service is considering how best to proceed with policy development relating to partnership arrangements. Public input relating to the questions listed above will be helpful in developing the Agency's policy.

Dated: September 8, 2010.

**Thomas L. Tidwell,**

*Chief, Forest Service.*

[FR Doc. 2010–22819 Filed 9–13–10; 8:45 am]

**BILLING CODE 3410–11–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51, 52, 72, 78, and 97

**[EPA–HQ–OAR–2009–0491; FRL–9201–6]**

**RIN 2060–AP50**

### Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; correcting amendments.

**SUMMARY:** The preamble to the proposed Transport Rule contains minor, technical errors that EPA is correcting in this action. In the portion of the preamble discussing in detail the proposed trading programs, EPA states clearly that it is proposing provisions that allow units to opt into these trading programs. Moreover, the proposed rule text for the Transport Rule includes detailed opt-in provisions for each proposed trading program. However, two sentences in other portions of the Transport Rule preamble erroneously state that the proposed trading programs do not allow units to opt in. In this proposed rule, EPA is correcting these technical errors.

**DATES:** *Effective Date:* These correcting amendments are effective on September 14, 2010.

*Comments:* The deadline for receipt of comments on the proposed Transport Rule (including the corrections proposed by this action) continues to be October 1, 2010, the same date set forth in the proposed Transport Rule (75 FR 45210, August 2, 2010) as the deadline for receipt of comments.

*Public Hearing:* As explained in the proposed Transport Rule, three public hearings were scheduled to be held before the end of the comment period. The dates, times and locations were announced separately. Please refer to the notice of public hearings (75 FR 45075, August 2, 2010) on the proposed Transport Rule for additional information on the comment period and the public hearings.

**ADDRESSES:** The EPA has established a docket for the proposed Transport Rule, including this action, under Docket ID EPA–HQ–OAR–2009–0491. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. This action and other rulemaking actions related to the proposed Transport Rule are also available at EPA's Air Transport Web site at *http://www.epa.gov/airtransport.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Tim Smith, Air Quality Policy Division, Office of Air Quality Planning and Standards (C539–04), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–4718; fax number: (919) 541–0824; e-mail address: *smith.tim@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

The proposed Transport Rule contains minor, technical errors in two sentences in the preamble. In the portion of the preamble (i.e., section V.D.4.a (75 FR 45307–9)) that discusses in detail the proposed Transport Rule trading programs, EPA states clearly that it is proposing provisions that allow units to opt into the proposed trading programs. Moreover, the proposed rule text in the proposed Transport Rule (75 FR 45389–92, 45414–17, 45438–41, and 45462–65) includes detailed opt-in provisions for each of these trading programs. However, subsequent portions (i.e., sections V.F.3 (75 FR 45338) and V.G.1 (75 FR 45340)) of the preamble compare the proposed rule with the Clean Air Interstate Rule and the Acid Rain Program and mention in a summary way the treatment of opt-in units in the proposed rule. Two sentences in those portions of the preamble erroneously state that the proposal does not allow units to opt in.

EPA believes that the proposed Transport Rule, as written, makes it clear that the Agency is proposing to allow units to opt into the Transport Rule trading programs. Furthermore, on July 15, 2010, EPA put a statement on its Web site noting that the proposed trading programs allow for opt-in units and explaining that the two sentences on 75 FR 45338 and 45340 are in error. On August 2, 2010, the docket for the proposed Transport Rule, including a memorandum noting that this statement had been put on EPA's Web site, became publicly available.

While EPA maintains that its proposal is clear in proposing to allow opt-in units, EPA is publishing this amendment to the proposed Transport Rule to eliminate any possible claim of confusion. Specifically, EPA is amending the two erroneous sentences in the proposed Transport Rule preamble as follows. The second sentence in section V.F.3 of the preamble (75 FR 45338 (col. 1)) is amended to read: "First, the proposed Transport Rule allows units to opt into the trading programs." The seventh sentence of section V.G.1 of the preamble (75 FR 45340 (col. 2)) is amended to read: "The Transport Rule programs as proposed have opt-in provisions, so sources, including those that have opted into the Acid Rain Program, would be able to opt into the Transport Rule programs." These amendments are technical changes that do not alter the substance of the proposal. On the contrary, the amendments simply make two sentences in the preamble that summarily refer to the treatment of opt-in units in the proposal consistent with the portions of the preamble and rule text that contain not only a comprehensive, detailed discussion of EPA's proposed inclusion of opt-in units in the proposed Transport Rule programs, but also the proposed opt-in provisions themselves.

**Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

This action only corrects minor, technical errors in the proposed Transport Rule and, as discussed above, does not make any substantive change

in the proposal. This action is therefore not an "economically significant regulatory action" under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993). Moreover, the Office of Management and Budget (OMB) previously reviewed the proposed Transport Rule under Executive Order 12866.

In addition, EPA previously prepared the Regulatory Impacts Analysis (RIA) for the proposed Transport Rule. This action correcting minor, technical errors does not affect the RIA. The RIA and the discussion of it in the proposed Transport Rule remain fully applicable to the proposed Transport Rule with the corrections proposed by this action.

*B. Paperwork Reduction Act*

EPA previously submitted for approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) the information collection requirements in the proposed Transport Rule. This action correcting minor, technical errors does not change these requirements and their estimated burden. The discussion of the requirements and their burden in the proposed Transport Rule remain fully applicable to the proposed Transport Rule with the corrections proposed by this action.

*C. Regulatory Flexibility Act (RFA)*

EPA previously certified that the proposed Transport Rule will not have a significant economic impact on a substantial number of small entities. This action correcting minor, technical errors does not change the economic impact. The certification and the discussion of it in the proposed Transport Rule remain fully applicable to the proposed Transport Rule with the corrections proposed by this action.

*D. Unfunded Mandates Reform Act*

EPA previously prepared a written statement under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538), and addressed the requirements of sections 203 through 205 of UMRA, concerning the proposed Transport Rule. This action correcting minor, technical errors does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The written statement and the discussion of the requirements of sections 203 through 205 of UMRA in the proposed Transport Rule remain fully applicable to the proposed Transport Rule with the corrections proposed by this action.

*E. Executive Order 13132: Federalism*

EPA previously discussed the federalism implications of the proposed Transport Rule. This action correcting minor, technical errors does not have any federalism implications. The discussion of federalism implications and of the applicability of Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) in the proposed Transport Rule remain fully applicable to the proposed Transport Rule with the corrections proposed by this action.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

EPA previously discussed the tribal implications of the proposed Transport Rule. This action correcting minor, technical errors does not have any tribal implications. The discussion of tribal implications, and of the applicability of Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (65 FR 67249, November 9, 2000), in the proposed Transport Rule remain fully applicable to the proposed Transport Rule with the corrections proposed by this action.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

EPA previously discussed the applicability of Executive Order 13045, Protection of Children From Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) to the proposed Transport Rule. This action correcting minor, technical errors does not involve decisions on environmental health and safety that may disproportionately affect children. The discussion in the proposed Transport Rule concerning Executive Order 13045 remains fully applicable to the proposed Transport Rule with the corrections proposed by this action.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

EPA previously prepared a Statement of Energy Effects under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001). This action correcting minor, technical errors not only is not a "significant energy action" as defined in section 4(b) of Executive Order 13211, but also does not affect the Statement of Energy Effects. The statement and the discussion of the statement in the proposed Transport Rule remain fully applicable to the proposed Transport Rule with the corrections proposed by this action.

*I. National Technology Transfer Advancement Act*

EPA previously discussed the consistency of the proposed Transport Rule with the requirements of section 12(b) of the National Technology Transfer and Advancement Act of 1995, (NTAA) Public Law 104–113, 12(d) (15 U.S.C. 272 note). This action correcting minor, technical errors does not involve the use of technical standards. The discussion of the application of NTAA requirements in the proposed Transport Rule remains fully applicable to the proposed Transport Rule with the corrections proposed by this action.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA previously discussed the application of the requirements of Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) to the proposed Transport Rule. This action correcting minor, technical errors does not change the human health or environmental effects of the proposed Transport Rule on minority, low-income, and Tribal populations in the United States. The discussion applying the requirements of Executive Order 12898 in the proposed Transport Rule remains fully applicable to the proposed Transport Rule with the corrections proposed by this action.

**List of Subjects**

*40 CFR Part 52*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

*40 CFR Part 78*

Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

*40 CFR Part 97*

Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 8, 2010.

**Lisa Jackson,**

*Administrator.*

[FR Doc. 2010–22851 Filed 9–13–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R08–OAR–2006–0952; FRL–9200–9]**

### Air Quality Implementation Plans; Montana; Attainment Plan for Libby, MT $PM_{2.5}$ Nonattainment Area and $PM_{10}$ State Implementation Plan Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Montana on March 26, 2008. Montana submitted this SIP revision to meet Clean Air Act requirements for attaining the 15.0 micrograms per cubic meter ($\mu g/m^3$) annual fine Particulate Matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) for the Libby nonattainment area. The plan, herein called an "attainment plan," includes an attainment demonstration, an analysis of Reasonably Available Control Technology and Reasonably Available Control Measures (RACT/RACM), base-year and projection year emission inventories, and contingency measures. The requirement for a Reasonable Further Progress (RFP) plan is satisfied because Montana projects that attainment with the 1997 $PM_{2.5}$ NAAQS will occur in the Libby nonattainment area by April 2010. In addition, we are proposing to approve the $PM_{10}$ SIP revisions to the Lincoln County Air Pollution Control Program submitted by Montana on June 26, 2006 for inclusion into Libby's attainment plan. This submittal contains provisions, including contingency measures, for controlling both $PM_{10}$ and $PM_{2.5}$ emissions from woodstoves, road dust, and outdoor burning. Finally, EPA is proposing to find on-road directly emitted $PM_{2.5}$ and oxides of nitrogen ($NO_X$) in the Libby, Montana nonattainment area insignificant for regional transportation conformity purposes. If this insignificance finding is finalized as proposed, the Libby, Montana nonattainment area will not have to perform a regional emissions analysis for either direct $PM_{2.5}$ or $NO_X$ as part of future conformity determinations for the annual 1997 $PM_{2.5}$ NAAQS.

**DATES:** Written comments must be received on or before October 14, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0952, by one of the following methods:

- http://*www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: freeman.crystal@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R08–OAR–2006–0952. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I, "General Information," of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129. EPA requests that, if at all possible, you contact the individual listed in **FOR FURTHER INFORMATION CONTACT** to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Crystal Freeman, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, *Phone:* (303) 312–6602, *Fax:* (303) 312–6064, *freeman.crystal@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The initials *$PM_{2.5}$* mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

(v) The initials *$PM_{10}$* mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.

(vi) The word *State* or *Montana* refers to the State of Montana unless the context indicates otherwise.

(vii) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

**Table of Contents**



## I. General Information

*A. What should I consider as I prepare my comments for EPA?*

1. Submitting CBI. Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

## II. What action is EPA proposing?

EPA is proposing to approve two Montana SIP submittals for the Libby nonattainment area: (1) $PM_{10}$ SIP revisions to the Lincoln County Air Pollution Control Program submitted by Montana on June 26, 2006; and (2) the Libby $PM_{2.5}$ attainment plan submitted by Montana on March 26, 2008. EPA has determined that the $PM_{10}$ SIP revisions and the $PM_{2.5}$ attainment plan meet applicable requirements of the Clean Air Act, including the Clean Air Fine Particle Implementation Rule (herein referred to as the implementation rule) issued by EPA on April 25, 2007 (72 FR 20586). Furthermore, EPA has determined that Montana's $PM_{2.5}$ SIP submittal for the Libby area includes an attainment demonstration, an analysis of RACT/RACM, base-year and projection-year emission inventories and contingency measures. The attainment plan supports a determination that the Libby $PM_{2.5}$ nonattainment area will attain the 1997 $PM_{2.5}$ NAAQS by the April 2010 deadline for attainment. Finally, EPA is proposing to find on-road directly emitted $PM_{2.5}$ and $NO_X$ in the Libby, Montana nonattainment area insignificant for regional transportation conformity purposes.

EPA's analysis and findings are discussed in this proposed rulemaking. Additional technical support documents are available at *http://www.regulations.gov,* Docket No. EPA–R08–OAR–2006–0952.

## III. What is the background for EPA's proposed action?

*A. Designation History*

On July 18, 1997 (62 FR 38652), EPA established $PM_{2.5}$ NAAQS, including an annual standard of 15.0 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (or daily) standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. In 1999, EPA and state air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS, and, by January 2001, established a complete set of air quality monitors. On January 5, 2005, EPA published initial air quality designations for the 1997 $PM_{2.5}$ NAAQS (70 FR 944), based on air quality monitoring data for calendar years 2001–2003. On April 14, 2005, EPA published a final supplemental rule amending the agency's initial designations (70 FR 19844). EPA did not consider modifications made in this rule to be "re-designations" because the changes were made before April 5, 2005, the effective date of the initial designations. As a result of the final supplemental rule, $PM_{2.5}$ nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of about 88 million people. The Libby nonattainment area which is the subject of this rulemaking is included in the list of areas not attaining the 1997 $PM_{2.5}$ NAAQS.

On October 17, 2006, EPA strengthened the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$ and retained the level of the annual $PM_{2.5}$ standard at 15.0 $\mu g/m^3$ (71 FR 61144). On November 13, 2009 EPA designated areas as either attainment/unclassified or nonattainment with respect to the revised 24-hour NAAQS (74 FR 58688). In the November 2009 designation action, EPA established a deadline of December 14, 2012 for states to submit attainment plans for areas designated as nonattainment for the revised 24-hour $PM_{2.5}$ NAAQS.

Of relevance to the proposed rulemaking herein, the notice for the November 2009 action clarified designations for the 1997 $PM_{2.5}$ NAAQS by relabeling the existing designation tables to identify designations for the annual NAAQS, and by providing a separate table identifying designations for the 1997 24-hour NAAQS (i.e., 65 $\mu lg/m^3$). In that table, the Libby nonattainment area is designated as attaining the 1997 24-hour $PM_{2.5}$ NAAQS.

*B. Clean Air Fine Particle Implementation Rule*

On April 25, 2007, EPA issued the Clean Air Fine Particle Implementation Rule for the 1997 $PM_{2.5}$ NAAQS (72 FR 20586). The implementation rule describes the CAA framework and requirements for developing state $PM_{2.5}$ attainment plans. An attainment plan must include a demonstration that a nonattainment area will meet applicable NAAQS within the timeframe provided in the statute. This demonstration must include modeling (40 CFR 51.1007) that is performed in accordance with EPA modeling guidance (EPA–454/B–07–002, April 2007). It must also include supporting technical analyses and descriptions of all relevant adopted federal, state, and local regulations and control measures that have been implemented by the proposed attainment date.

For the 1997 $PM_{2.5}$ NAAQS, an attainment plan must show that a nonattainment area will attain the standard by 2010. Alternatively, if the area is not expected to meet the NAAQS by 2010, a state may propose an attainment-date extension for up to five years based on the severity of the nonattainment problem and on the availability and feasibility of pollution control measures (CAA section 172(a)(2)).

For each nonattainment area, the state must demonstrate that it has adopted all RACT/RACM needed to show that the area will attain the $PM_{2.5}$ standards "as expeditiously as practicable." The implementation rule provided guidance for making these RACM and RACT determinations (72 FR 20616–21). Any measures that are necessary to meet these requirements which are not already either federally promulgated or part of the state's SIP must be submitted in enforceable form as part of a state's attainment plan.

The implementation rule also included policies on pollutants that comprise total $PM_{2.5.}$ Five main types of pollutants contribute to fine particle concentrations: direct $PM_{2.5}$, sulfur dioxide ($SO_2$), nitrogen oxides ($NO_X$), ammonia, and volatile organic compounds (VOCs). All but direct $PM_{2.5}$ is considered to be "precursors" to $PM_{2.5}$ formation. The effect of reducing emissions of each of these five types of pollutants varies by area, depending on $PM_{2.5}$ composition, emission levels, and other area-specific factors. For this reason, the implementation rule established policies regarding what states should include in their $PM_{2.5}$ attainment plans for evaluating these pollutants.

Under these policies, sources of direct $PM_{2.5}$ emissions (including organic particles, elemental carbon and inorganic particles) and $SO_2$ must be evaluated for emission reduction measures in all $PM_{2.5}$ nonattainment areas. Sources of $NO_X$ must be evaluated for emission reduction measures in each area unless the state and EPA demonstrate that $NO_X$ is not a significant contributor to $PM_{2.5}$ concentrations in a specific area. Neither VOC nor ammonia sources are required to be evaluated for emission reduction measures in an area unless the state or EPA demonstrates that either of these pollutant types significantly contributes to $PM_{2.5}$ concentrations. To reverse any of the presumptive precursor policies, the implementation rule provided guidance on the types of analyses that may be included in a technical demonstration.

The implementation rule also provided guidance on other elements of a state's attainment plan, including but not limited to, consideration of emission inventories, contingency measures, and motor vehicle emissions budgets used for transportation conformity purposes.

**IV. What is included in Montana's submittal?**

*A. Background*

Libby, Montana, a small rural community, is located in Lincoln County in the northwestern part of the State. Libby sits in the narrow, triangular Kootenai valley at an elevation of 2,100 feet. The nonattainment area is dominated by three major mountain ranges that limit the air-shed: (1) The Rocky Mountain and Flathead Ranges on the eastern boundary; (2) the Purcell Range, which roughly bisects the area from north to south; and (3) the Selkirk and Cabinet Ranges on the western boundary. The vast majority of the area surrounding Libby is National Forest managed by the U.S. Forest Service. Based on the 2000 census and a growth rate through 2005 of 3.71%, Libby's population is estimated at 2,674.

The highest $PM_{2.5}$ concentrations in Libby generally occur during the winter months of November through February. The winter concentrations are related to stagnant weather conditions dominated by light winds and strong temperature inversions. These meteorological conditions can trap emissions within the valley for many days or weeks.

Air quality data recorded during 2001–2003 at the $PM_{2.5}$ monitor at the Libby Courthouse Annex showed violations of the annual $PM_{2.5}$ standard. Libby was designated nonattainment for $PM_{2.5}$ under section 107(d)(3) of the CAA, on April 5, 2005 (40 CFR part 81). The air quality planning requirements for $PM_{2.5}$ nonattainment areas are set out in Title I subpart 1 of the Act.[1]

Historically, Libby was designated nonattainment for $PM_{10}$ by operation of law on November 15, 1990 (56 FR 56694, 56794, November 6, 1991), under CAA section 107(d)(4)(B) and was classified as "Moderate." The $PM_{10}$ attainment plan was approved by EPA on August 30, 1994 (59 FR 44627). Montana has submitted revisions to the Lincoln County Air Pollution Control Program (herein referred to as the Program) and the Libby and Vicinity $PM_{2.5}$ Control Plan (herein referred to as the Libby attainment plan) for the purpose of demonstrating attainment of the annual $PM_{2.5}$ NAAQS. After public notice, public hearings regarding these two submittals were held on February 27, 2006 for the Lincoln County Air Pollution Control Program and on March 25, 2008 for the Libby and Vicinity $PM_{2.5}$ Control Plan. The Montana Board of Environmental Review approved the revised Lincoln County Air Pollution Control Program on March 23, 2006 and the Libby attainment plan on March 25, 2008. Montana has met the requirements of Section 110(a)(2) for reasonable notice and public hearings.

*B. $PM_{10}$ SIP Revisions to the Lincoln County Air Pollution Control Program*

Montana submitted revisions to the $PM_{10}$ SIP for the Lincoln County Air Pollution Control Program for the Libby nonattainment area to improve and strengthen the $PM_{10}$ attainment plan. The revisions include several provisions to regulate solid fuel burning devices and require owners and operators to obtain operating permits. Operating permits may only be issued for EPA-certified woodstoves or for pellet stoves. Furthermore, only specified materials can be burned in these devices, and visible emissions of greater than 20% opacity from them are prohibited. Additionally, these provisions allow for air pollution alerts if $PM_{10}$ or $PM_{2.5}$ concentrations averaged over a 4-hour period exceed a level 20 percent below any federal or state particulate matter standard. Provisions are also included for penalties for non-compliance and contingency measures.

Additionally, revisions were made for open and outdoor burning regarding prohibited materials, major open burning and management burning, minor open burning or residential open

[1] Subpart 1 applies to nonattainment areas generally.

burning, and special burning. These revisions generally included significant limits on the time periods for open burning activities as compared to the existing $PM_{10}$ SIP. Further restrictions also include prohibitions on burning from November 1 to March 31, which is the winter-time period when exceedances of $PM_{2.5}$ typically occur. Lincoln County's Program prohibits burning the same materials as the State but is more restrictive because the burning of trade waste, Christmas tree waste, leaves, grass clippings and stumps is prohibited within the Air Pollution Control District [2] (herein referred to as the District). The June 26, 2006 submittal also included a stringency analysis for the Program showing that the revisions are more stringent than comparable State law.

*C. Libby and Vicinity $PM_{2.5}$ Control Plan*

The Libby attainment plan provides a demonstration that the annual $PM_{2.5}$ NAAQS will be met by April 2010 through the implementation of the Lincoln County Program described in section B above. The Libby attainment plan includes an emissions inventory (EI), a woodstove air pollution control calculation, and a technical analysis showing that the emissions of $PM_{2.5}$ will be reduced sufficiently to meet the NAAQS. The key components of the Libby attainment plan are described as follows:

1. Ambient air quality monitoring in the Libby area began in 1999 and is conducted using Federal Reference Method (FRM) $PM_{2.5}$ samplers at the Courthouse Annex site in downtown Libby. Based on monitoring data from the years 2001 to 2003, the 3-year annual design value was 15.9 $\mu g/m^3$, which is a violation of the annual $PM_{2.5}$ NAAQS. In February 2002, speciation monitoring was conducted to determine possible $PM_{2.5}$ emission sources. The results identified organic carbon as the main component of wintertime $PM_{2.5}$ emissions. Further ambient monitoring was conducted from November 2003 to February 2004 to determine the geographic distribution of $PM_{2.5}$ concentrations. After additional monitoring from various locations beyond Libby city limits and meteorological data from Libby Courthouse Annex site, it was determined that the Libby Courthouse Annex site represented the worst-case ambient $PM_{2.5}$ levels in the area.

2. A chemical mass balance study (CMB) was conducted during the winter of 2003–2004 by the University of Montana, Center for Environmental Health Sciences (UM–CEHS). The goal of the CMB study was to identify those emission sources in the Libby area that contributed to elevated $PM_{2.5}$ concentrations. The CMB model runs indicated that emissions from residential wood combustion were the major source of the fine particles on the $PM_{2.5}$ filters, averaging 82% during the CMB study period (i.e., winter months). Other contributing $PM_{2.5}$ sources identified by the CMB model were automobile exhaust (7%), ammonium nitrate (5%), diesel exhaust (4%), and sulfate (2%).[3]

3. Carbon 14 ($^{14}C$) analysis, as a part of the CMB study completed by UM–CEHS, was conducted by the University of Arizona's Accelerator Mass Spectrometry Laboratory Facility to provide further evidence that wood combustion was the major source of $PM_{2.5}$ emissions in Libby.[4]

4. The Libby base year $PM_{2.5}$ EI included a quantification of actual $PM_{2.5}$ emissions and apportioned the emissions on a seasonal and annual basis for point and area sources. The State used calendar year 2005 as the base year for the development of an EI for the Libby area. The EI was used to support a proportional rollback model for the emission control plan. The State developed information for 2005 that allowed for the calculation of residential wood combustion and commercial fuel use.

5. The Libby $PM_{10}$ SIP as revised also serves as the control plan for emissions of $PM_{2.5}$. Controls exist for reducing emissions from re-entrained road dust through aggressive street sweeping and flushing, and traction sand durability requirements. Emissions of organic carbon are controlled through residential woodstove regulations and outdoor burning restrictions.

6. A significant part of the $PM_{2.5}$ control strategies has been the completion of a woodstove changeout program. Approximately 1,130 uncertified woodstoves were replaced with EPA-certified woodstoves or pellet fuel burning devices. After the changeout, $PM_{2.5}$ emissions have been reduced from approximately 138.78 tons/year to 57.21 tons/year, a decrease of 59%.

$PM_{2.5}$ control strategies are primarily focused on residential wood combustion. The control strategies also include: air pollution alerts may be declared during the winter months; solid fuel burning devices must have an operating permit; only EPA-certified woodstoves and pellet fuel burning devices can obtain permits; and only permitted pellet fuel devices can operate during air pollution alerts. Other control strategies for $PM_{2.5}$ have included an expanded area for the prescribed burning control program and the continuing federal tailpipe standards.

7. Analysis for RACT/RACM was conducted for the Libby area. EPA's RACT/RACM guidance covers three general source categories: stationary, mobile and area (79 FR 20586). The Libby $PM_{2.5}$ CMB study did not identify any emissions from local stationary sources, only a minor amount from mobile sources, and a significant amount from an area source category—residential wood combustion. EPA's area source RACM guidance covers four source categories: (1) Reduced solvent usage or solvent substitution; (2) controls on charbroiling or other commercial cooking operations; (3) controls on woodstoves and fireplaces; and (4) new or improved regulations on open burning (79 FR 20586 and 20621). The Libby attainment plan concluded that wood combustion control strategies and more stringent rules on open burning constituted RACM for area sources. The analysis further noted that the other two categories of area sources, commercial users of solvent and commercial cooking, were infrequent in the Libby area. The analysis also considered mobile sources, but determined that in light of their small contribution to $PM_{2.5}$ nonattainment, existing federal tailpipe standards and natural turnover rates of the local vehicle fleet made additional measures for mobile sources unnecessary.

8. The Lincoln County Air Pollution Control Program is legally enforceable by Lincoln County, and by the State should Lincoln County fail to administer the program. The Libby attainment plan also provides for contingency measures if the NAAQS are exceeded after implementation. There is one contingency measure for wood burning for space heating purposes if it is determined that wood burning emissions contribute to an exceedance of the $PM_{2.5}$ NAAQS, then only biomass pellet fuel burners may operate within the District. Other contingency measures are included for re-entrained dust and industrial facilities. There is also a review process to consider permanent adoption of a contingency measure.

[2] The boundaries of the District are identical to those for the nonattainment area.

[3] Ward, T.J., Rinehart, L.R., Lange, T. The 2003/2004 Libby, Montana $PM_{2.5}$ Source Apportionment Research Study. Aerosol Science and Technology. Vol. 40:166–177. 2006.

[4] Ibid.

## V. EPA's Analysis of Montana's Submittal

### *A. $PM_{10}$ SIP Revisions to Lincoln County Air Pollution Control Program*

EPA's summary of the $PM_{10}$ SIP revisions is addressed in detail under section IV.B. These revisions were made for two purposes: (1) To address $PM_{2.5}$ attainment plan requirements; and (2) to improve and strengthen requirements for continued attainment of $PM_{10}$. The revisions are a significant improvement to a plan that was approved by EPA 16 years ago. The Libby area has not had an exceedance of the $PM_{10}$ NAAQS since 1993. Furthermore, clarifications were made to the language to better explain to the public the requirements of the air quality program. The revisions removed exemptions and replaced them with requirements for obtaining permits for wood burning appliances. These revisions also added enforcement provisions where previously none had existed.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. The Libby area is currently meeting the NAAQS for all criteria pollutants and has not had any violations of the $PM_{10}$ standard for over a decade. Furthermore, the revisions do not relax the stringency of any SIP provision; in fact, the revisions generally strengthen the SIP. As a result, the $PM_{10}$ SIP revisions do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. Therefore, section 110(l) requirements are satisfied.

### *B. Attainment Demonstration*

In accordance with section 172(c) of the CAA and the implementation rule, the attainment plan submitted by Montana for the Libby area included: (1) Emission inventories for the plan's base year (2005) and projection year (2009); and (2) an attainment demonstration consisting of: (a) Technical analyses that locate, identify, and quantify sources of emissions contributing to violations of the annual $PM_{2.5}$ NAAQS; (b) analyses of future-year emission reductions and air quality improvements expected to result from national and local programs, and from new measures to meet RACT/RACM requirements; (c) adopted emission reduction measures; and (d) contingency measures.

### *C. Analysis of Montana's Submittals*

#### 1. Pollutants Addressed and Attainment Date

In accordance with policies described in the implementation rule, Montana's $PM_{2.5}$ attainment plan evaluates emissions of direct $PM_{2.5}$, $SO_2$ and $NO_X$ in the Libby area. Montana provided documentation of expeditious attainment of the annual $PM_{2.5}$ NAAQS in the Libby area by April 2010. Areas that demonstrate attainment by 2010 are considered to have satisfied the requirement to show reasonable further progress toward attainment and need not submit a separate RFP plan. For similar reasons such areas are also not subject to a requirement for a mid-course review.

Montana's evaluation of emissions is based on the work conducted by UM–CEHS for the CMB model runs indicating that emissions from residential wood combustion were the major source (82%) of the fine particles on the $PM_{2.5}$ filters. Other $PM_{2.5}$ sources identified by the CMB model were automobile exhaust (7%), ammonium nitrate (5%), diesel exhaust (4%), and sulfate (2%). In addition, a Carbon 14 analysis confirmed that wood combustion is the major source of $PM_{2.5}$ emissions in the Libby area and that emissions of both $SO_2$ and $NO_X$ are very minor compared to $PM_{2.5}$ emissions from residential wood combustion. As described in the emissions inventory, the sources of $SO_2$ are from home heating oil and sources of $NO_X$ are from on-road and off-road mobile sources (see further discussion in section V.C.7. on $NO_X$ emissions from mobile sources).

#### 2. Monitoring Data

As shown in the table below, the annual weighted average for 2009 shows that the Libby area has met the April 2010 deadline for the 1997 $PM_{2.5}$ NAAQS. The trend in annual average concentrations is downward and coincides with the implementation of the woodstove changeout program. This is based on quality-controlled and quality-assured monitoring data from 2005–2009 that is available in the EPA Air Quality System (AQS).

TABLE V.2–1

| Year | Annual weighted average ($\mu g/m^3$) |
|---|---|
| 2005 | 15.8 |
| 2006 | 15.2 |
| 2007 | 13.0 |
| 2008 | 12.9 |
| 2009 | 10.7 |

#### 3. Emission Inventory

CAA section 172(c)(3) states that for nonattainment areas, the State shall prepare a statewide emission inventory no later than three years after designation. The baseline emission inventory for calendar year 2005 or another suitable year shall be used for attainment planning (40 CFR 51.1008(b)). EPA promulgated the Air Emissions Reporting Rule (AERR) (40 CFR part 51, subpart A) in order to consolidate the various reporting requirements that already exist, including those requirements outlined in the $PM_{2.5}$ implementation rule. The AERR requires states to report statewide emissions every three years. Montana prepared a statewide emission inventory for 2005. This inventory included annual totals of emissions of criteria pollutants and their precursors. The State used data from this statewide inventory to create an emission inventory specific to the Libby area.

Monitoring data for 2005 showed an exceedance of the $PM_{2.5}$ annual standard. The year 2005 is a suitable year for attainment planning because an emission inventory for this year is representative of ambient emission levels that led to the exceedance of the annual standard. The 2005 emission inventory showed that residential wood burning comprised 82% of the direct $PM_{2.5}$ emissions during the winter. The next largest direct source, road dust, was 11%, followed by locomotive emissions at 3.4%. The remaining criteria pollutant emissions were very minor, including the precursors of $PM_{2.5}$ (i.e., $NO_X$ and $SO_2$). Background values of $PM_{2.5}$ were accounted for by the State using monitored data collected at remote stations far away from emissions sources in the Libby area. EPA notes that the State used a conservative emission inventory approach for projecting future growth for the 2010 attainment year which involved increasing the vehicle emissions by 2.1% (the population growth rate) from the 2005 base year inventory, and not taking any credit for potential emission reductions that may have been available from fleet turnover and the Federal tailpipe standards for vehicles. Condensable particulate matter was not considered in the emission inventory because of a lack of sources in the Libby area.

#### 4. Modeling

CAA Section 172(c) requires states with nonattainment areas to submit an attainment demonstration. A $PM_{2.5}$ attainment demonstration consists of (1) analyses which estimate whether

selected emissions reductions will result in ambient concentrations that meet the NAAQS and (2) a set of control measures which will result in the required emissions reductions.

Montana's analysis of future-year emissions reductions and air quality improvements was based on a proportional rollback model for showing attainment of the standard and a roll forward model demonstrating attainment in the future. The proportional models were applied in conjunction with the findings from chemical mass balance and Carbon 14 studies conducted by the University of Montana.

In the particular case of Libby, a proportional model is more appropriate than dispersion models. The great majority of periods with elevated $PM_{2.5}$ concentrations in Libby occur during wintertime stagnation conditions. Furthermore, dispersion in Libby is constrained by steep terrain. The most suitable approach for stagnation conditions should be determined on a case-by-case basis, (see sections 7.2.8 and 8.3.4.2(b) of the Guideline on Air Quality Models, 40 CFR part 51, appendix W), and an alternative model should be selected by the EPA Regional Office when a preferred model is less appropriate (see section 3.2.2 of the Guideline).

The proportional model used the emission inventory for 2005 when there was an exceedance of the standard. The decrease in $PM_{2.5}$ emissions for the Libby area resulting from the woodstove changeout program was calculated based on the amount of wood burned by the EPA-certified woodstoves and then compared to the amount of emissions resulting from burning the same amount of wood from the uncertified woodstoves that were still in use. The decrease in emissions would be an indication of the effectiveness of the control strategy. Montana estimated that $PM_{2.5}$ emissions would be reduced by 81.57 tons as a result of the new EPA-certified woodstoves installed in Libby households.

The State projected future annual average $PM_{2.5}$ concentrations for Libby at 9.5 $\mu g/m^3$. This projection was based on the installation of the new stoves and a 100 percent compliance with the wood burning restrictions for Libby. EPA's guidance is based on emission sources complying with state and local restrictions on emission sources (Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, appendix B, EPA–454/R–05–001, August 2005.) The guidance defines rule effectiveness (RE) as a method to account for the reality that not all emission sources are in compliance 100% of the time.

The guidance provides a listing of the factors that are most likely to affect RE. EPA used a conservative 70% RE instead of a 100 percent compliance to determine if Libby would still reach attainment of the $PM_{2.5}$ standard. EPA estimated that using the more conservative compliance percentage for wood burning restrictions, the future value for Libby would still be below the $PM_{2.5}$ standard of 15 $\mu g/m^3$. As stated above in Table V.2.–1 the Libby area 2009 annual average is currently 10.7 $\mu g/m^3$.

5. RACT/RACM

Determination of RACT/RACM is a three-step process: (1) Identifying potential measures that are reasonable; (2) modeling to identify the attainment date that is as expeditious as practicable; and (3) selecting RACT/RACM. Identification of potential measures should ordinarily be supported by an inventory of emissions of directly emitted $PM_{2.5}$ and of precursors from the relevant sources and source categories; the technologically feasible control measures for each source or source category; and, for each measure, the control efficiency, possible emission reductions by pollutant, estimated cost per ton, and the date by which the measure was or could be implemented; and other relevant information.

For the first step, identification of potential measures that are reasonable, Montana supported its RACT/RACM analysis with the emissions inventory and the CMB study. The RACT/RACM analysis first noted that there are no major stationary sources of $PM_{2.5}$ in the Libby area. It also noted that minor stationary sources are currently regulated under Montana's minor source program, which requires permits and a Best Available Control Technology (BACT) review. As discussed in the implementation rule, if state or federal rules already regulate a given sector, it is reasonable for a state to look to unregulated sectors for RACT/RACM measures. Furthermore, the implementation rule permits the state to use reason in the extent of its effort to identify potential control measures. For example, the rigor of the analysis may depend on the relative contribution of a particular pollutant to the $PM_{2.5}$ nonattainment problem (72 FR 20613). As shown by the CMB study, stationary sources are a very minor contributor to $PM_{2.5}$ nonattainment in Libby. Similarly, the RACT/RACM analysis reasoned that mobile sources are currently regulated, make only a minor contribution to the nonattainment problem, and the overall emissions will continue to be reduced through fleet turnover. Thus, the first step focused on measures for area sources.

The analysis further noted that two types of area sources (commercial users of solvents and commercial charbroilers or other commercial cooking operations) were infrequent in the Libby area. The analysis also discussed re-entrained road dust, which the CMB study did not identify as a contributor to $PM_{2.5}$ nonattainment, and noted that there were existing SIP provisions to control road dust. As to home heating oil, a source of $SO_2$, the CMB study found only a 2% contribution to $PM_{2.5}$ nonattainment for all sulfates combined. Thus, the RACM analyses focused on the remaining area sources of wood burning devices and open burning and identified several control measures to be included in the attainment plan.

For the second step, as discussed in more detail in section V.C.4, Montana modeled attainment by 2010 based on adoption of these reasonable control measures. Finally, for the third step, based on the analysis, Montana selected and adopted RACM for wood burning devices and open burning. For wood burning devices, the State developed and implemented a woodstove changeout control strategy. The woodstove changeout permanently removed 1,130 old, uncertified woodstoves and replaced them with EPA-certified woodstoves or pellet stoves. Additionally, the State adopted measures that require permits for solid fuel burning devices (including woodstoves) and restrict installation and operation of these devices to three categories: pellet stoves, devices with a catalytic emissions control system, and devices with a non-catalytic emissions control system. For the latter two, emission limits are imposed.

RACM measures were also included for major open burning, management burning, residential burning, and special burning. The $PM_{2.5}$ attainment plan includes BACT and permits for an expanded area, which is the entire Air Pollution Control District, for all of these different types of burning activities. Additionally, these burning activities were restricted to shorter time periods.

In summary, the State evaluated, by source category, sources of direct $PM_{2.5}$, $SO_2$ and $NO_X$ for RACT/RACM control measures. The State's evaluation of sources of $SO_2$ and $NO_X$ resulted in their decision that no additional controls are necessary to attain the

NAAQS based on the absence of major sources or area sources that can be cost effectively or reasonably controlled. The State therefore adopted RACM for direct $PM_{2.5}$. In accordance with Section 172(c) of the CAA, Montana has adopted all RACT/RACM needed to attain the standards as expeditiously as practicable. EPA has reviewed Montana's RACT/RACM analysis and has determined that the state reasonably identified potential control measures, modeled the attainment date that is as expeditious as practicable and reasonably selected RACT/RACM for the Libby area.

6. Contingency Measures

In conformance with Section 172(c)(9) of the CAA, the implementation rule requires that $PM_{2.5}$ attainment area plans include contingency measures. These measures must be fully adopted or otherwise ready for quick implementation, should contain trigger mechanisms and an implementation schedule, should be measures not included in the SIP control strategy, and should provide the equivalent of one year of RFP. Once triggered, a contingency measure should take effect without further action by the State or EPA.

The Libby SIP contains contingency measures for residential wood burning, re-entrained dust, and industrial facilities. If it is determined that residential wood burning contributes to an exceedance of the $PM_{2.5}$ NAAQS, then only biomass pellet fuel burners may operate within the District. If re-entrained dust contributes to noncompliance, then the existing regulations (which currently only apply in a limited area) are made applicable to the entire Air Pollution Control District. Finally, if an industrial facility contributes to noncompliance, the Montana Department of Environmental Quality (MTDEQ) will initiate contingency measures to reduce emissions. Once a contingency measure is initiated, it must remain active until the Libby SIP demonstration is revised and resubmitted to EPA for approval.

The contingency measures for residential wood burning and re-entrained dust meet the requirements of the implementation rule. The contingency measure for major point sources would require further action by MTDEQ to determine whether additional controls are necessary. However, the contingency measures for residential wood burning and re-entrained dust are sufficient to meet the requirements of the CAA, including equivalence to one year of RFP.

7. Transportation Conformity Requirements

Transportation conformity is required under CAA section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects are consistent with ("conform to") the state air quality implementation plan. Transportation conformity applies to areas that are designated nonattainment, and to those areas redesignated to attainment after 1990 with a CAA section 175A maintenance plan ("maintenance areas"), for transportation-related criteria pollutants: carbon monoxide (CO), $NO_X$ and particulate matter ($PM_{2.5}$ and $PM_{10}$).

EPA's transportation conformity rule (40 CFR parts 51 and 93) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. One requirement of the rule is that transportation plans, TIPs, and projects must satisfy a regional emissions analysis for the relevant pollutants and precursors (40 CFR 93.118, 119). However, section 93.109(m) of this rule states that an area is not required to satisfy a regional emissions analysis for a pollutant or precursor if the SIP demonstrates that motor vehicle emissions of that pollutant or precursor are an insignificant contributor to the area's air quality problem. In today's notice, EPA is proposing to find that motor vehicle emissions of $PM_{2.5}$ and $NO_X$ are insignificant contributors to Libby's $PM_{2.5}$ nonattainment problem. If this proposal is finalized, $PM_{2.5}$ and $NO_X$ motor vehicle emissions budgets (MVEB) would not be established and a regional emissions analysis would not be required for either $PM_{2.5}$ or $NO_X$ in any future conformity determination in Libby. Please note, however, that this proposed action would not apply to $PM_{2.5}$ hot-spot analyses for individual projects, if such an analysis is required in the future for transportation conformity purposes.

There are specific transportation conformity provisions that EPA proposes to determine as applicable to the Libby $PM_{2.5}$ nonattainment area. As provided in more detail in 40 CFR 93.109(m), these specific conformity provisions are addressed when EPA finds that emissions from motor vehicles in the Libby $PM_{2.5}$ nonattainment area are an insignificant contributor to the areas' nonattainment problem for a relevant NAAQS and/or precursor.

To consider making such an insignificant finding, EPA evaluated the provisions of 40 CFR 93.109(m) against the relevant information contained in the SIP attainment plan, the SIP revision's associated technical support document (TSD), and additional information as developed by EPA. We evaluated the following factors in determining whether on-road direct $PM_{2.5}$ and $NO_X$ emissions are insignificant contributors to the area's $PM_{2.5}$ air quality problem; (1) the percentage of motor vehicle emissions in the context of the total SIP inventory; (2) the current state of air quality as determined by monitoring data for that NAAQS; (3) the absence of SIP motor vehicle control measures; and (4) historical trends and future projections of the growth of motor vehicle emissions. Our evaluation and conclusions are as follows:

a. The Percentage of $PM_{2.5}$ Motor Vehicle Emissions in the Context of the Total SIP Inventory

This factor, with regard to $PM_{2.5}$ emissions, is addressed in two areas of the SIP revision documentation. Table 27.12.11.4B ("$PM_{2.5}$ Annual Demonstration of Compliance") of the Libby attainment plan provides relevant information with regard to 2003–2004 CMB percentages by source category, percent reduction in emissions due to control strategies, estimated growth in emissions over the 2005 to 2010 time period, and 2010 compliance year contributions. The dominant CMB source was residential woodstoves at 82% with motor vehicle tailpipe emissions at 7% of total $PM_{2.5}$ mass and diesel exhaust at 4% of the total $PM_{2.5}$ mass.

The contribution of motor vehicle $PM_{2.5}$ emissions is also documented in Table 5.1A ("Seasonal PM 2.5 Emissions in Libby by Source Category") of the SIP's TSD. Table 5.1A presents estimated emissions based on metric tons and percentage of the inventory for 2005, by season; we have provided these motor vehicle tailpipe $PM_{2.5}$ emissions, as percent of total $PM_{2.5}$ emissions, in Table V.7–1 below. We note that in Table 5.1A of the SIP's TSD, the inventory is dominated by woodstove emissions in all four seasons.

TABLE V.7—1 MOTOR VEHICLE $PM_{2.5}$ EMISSIONS PERCENTAGE OF TOTAL INVENTORY FOR 2005

(All figures are in metric tons)

| Season | Motor vehicle $PM_{2.5}$ emissions | Total inventory $PM_{2.5}$ emissions | Motor vehicle emissions % of total |
|---|---|---|---|
| Winter | 0.48 | 80.63 | 0.59 |
| Spring | 0.55 | 46.43 | 1.18 |
| Summer | 0.66 | 13.66 | 4.83 |
| Fall | 0.51 | 97.67 | 0.52 |
| Total Year | 2.2 | 238.38 | 0.92 |

As shown in Table V.7.–1 above, motor vehicle tailpipe $PM_{2.5}$ emissions represent an annual average of only 0.92% of the total $PM_{2.5}$ inventory. That is, motor vehicle emissions are less than one percent of the inventory over the course of a year. During the summer, motor vehicle emissions make up close to five percent of the inventory, but motor vehicle emissions are only slightly higher during the summer than during other seasons. The motor vehicle emissions percentage is much greater during the summer compared with other seasons primarily because total $PM_{2.5}$ emissions are significantly reduced during the summer compared to other seasons; summer is the season with the fewest emissions from woodstoves. The information provided in the State's submittal supports a conclusion that regional $PM_{2.5}$ on-road mobile source emissions are a minimal percentage in the context of the total $PM_{2.5}$ emissions inventory. Therefore, this factor supports the proposed finding that on-road $PM_{2.5}$ emissions are insignificant for the Libby $PM_{2.5}$ nonattainment area.

b. The Current State of Air Quality as Determined by Monitoring Data for the $PM_{2.5}$ NAAQS

This factor is addressed as shown in the table below. From the State's SIP revision and section V.B.2 above, from 2007 to 2009 the Libby area continues to demonstrate attainment of the 1997 annual $PM_{2.5}$ NAAQS. Furthermore, the trend in annual average concentrations is downward and coincides with the implementation of the woodstove changeout program. This data is based on quality-controlled and quality-assured monitoring data from 2005–2009 that are available in the EPA AQS. This factor supports the proposed finding that on-road $PM_{2.5}$ emissions are insignificant for the Libby $PM_{2.5}$ nonattainment area.

TABLE V.2.–1

| Year | $PM_{2.5}$ annual weighted average (µg/m3) |
|---|---|
| 2005 | 15.8 |
| 2006 | 15.2 |
| 2007 | 13.0 |
| 2008 | 12.9 |
| 2009 | 10.7 |

c. The Absence of SIP Motor Vehicle Control Measures for $PM_{2.5}$

The Libby $PM_{2.5}$ attainment plan relies on a 59% reduction in residential woodstove emissions to reach attainment of the annual $PM_{2.5}$ NAAQS and took no credit for any emission reductions in the motor vehicle tailpipe and diesel exhaust categories (*e.g.* Federal tailpipe emission standards and fleet turnover). The State further described these assumptions in sections 27.12.7.3 ("Federal Tailpipe Standards Control Program") and 27.12.11.4 ("$PM_{2.5}$ 2010 Demonstration of Compliance") of the Libby attainment plan. EPA also notes there is no State or local mandated motor vehicle emission control requirements (*e.g.,* inspection and maintenance program, fuels, or transportation control measures) for the Libby $PM_{2.5}$ nonattainment area. Therefore, this factor supports the proposed finding that on-road $PM_{2.5}$ emissions are insignificant for the Libby $PM_{2.5}$ nonattainment area.

d. Historical Trends and Future Projections of the Growth of Motor Vehicle $PM_{2.5}$ Emissions

Libby's annual $PM_{2.5}$ 2001–2003 design value was 15.9 µg/m$^3$. In November 2003 through February 2004 air quality data was collected in Libby to support CMB modeling. This CMB modeling showed that residential wood smoke was the primary source of $PM_{2.5}$ in Libby. Table 27.12.11.4B in the Libby attainment plan shows that, when the results of the CMB modeling are applied to the air quality data from 2001–2003, residential wood smoke contributed 13.0 µg/m$^3$ (82%) of the 2001–2003 annual $PM_{2.5}$ design value, motor vehicle tailpipe emissions contributed 1.1 µg/m$^3$ (7%), and diesel exhaust emissions contributed 0.7 µg/m$^3$ µg/m$^3$ (4%). Based on the results of this modeling Montana based its attainment strategy for the area on a woodstove change-out program.

The SIP assumes that the woodstove change-out program will reduce those emissions by 59% in 2010. The SIP also assumes that motor vehicle tailpipe emissions and diesel exhaust emissions would grow by 2.1% between 2005 and 2010, which is equal to the expected population growth rate during that period. The SIP does not account for any reductions in motor vehicle emissions or diesel exhaust that would occur due to fleet turnover to new lower emission motor vehicles, on-road diesel vehicles or off-road equipment. Table 27.12.11.4B in the Libby attainment plan shows that in 2010 the predicted annual average $PM_{2.5}$ concentration would be 8.37 µg/m$^3$. The table also shows that residential wood smoke is expected to contribute 5.44 µg/m$^3$ (65%) in 2010, motor vehicle tailpipe emissions would contribute 1.12 µg/m$^3$ (13%), and diesel exhaust emissions would contribute 0.71 µg/m$^3$ (8%). As can be seen, on a percentage basis the contribution of motor vehicle emissions and diesel exhaust increases; however, overall $PM_{2.5}$ concentrations are expected to decrease by 53% to 8.37 µg/m$^3$, the contribution of wood smoke emissions is expected to decrease by 59%, and the total contribution of emissions from motor vehicles and diesel exhaust to $PM_{2.5}$ mass in 2010 is expected to increase by only 0.03 µg/m$^3$ between 2005 and 2010. This increase in mass is due to the assumptions that emissions from these sources increase at the same rate as population growth and that no emissions reductions from fleet turnover are included in the calculations. Both of these are conservative assumptions.

EPA notes that the contribution of motor vehicle emissions of 13% to $PM_{2.5}$ mass in 2010 represents the projected chemical mass balance of $PM_{2.5}$ and not an emission inventory projection. The

SIP includes a base year $PM_{2.5}$ inventory (Table 5.1A) for 2005. That inventory shows that motor vehicle emissions of $PM_{2.5}$ are 2.20 tpy and that total $PM_{2.5}$ emissions in the base year are 238.39 tpy. Therefore, the motor vehicle emissions in the base year are slightly less than 1% of the total direct $PM_{2.5}$ emissions. On the surface this may seem to be in conflict with the results of the CMB modeling, which shows that motor vehicle exhaust contributed about 7% of the $PM_{2.5}$ mass in the base year. However, it should be noted that the chemical mass balance data and the $PM_{2.5}$ data collected at the Libby Courthouse Annex represents only one receptor within the City of Libby, and only for the period of late 2003 through early 2004. While this location is believed to be representative of Libby's air quality, numerous factors influence the local particulate matter concentrations and air quality. Local scale meteorology (wind speed, wind direction, temperature, relative humidity, barometric pressure, and solar radiation at a minimum), traffic patterns, and precipitation are a few examples of these factors which vary throughout the city. Accepting that variable conditions exist throughout Libby, as well as the inherent uncertainty associated with ambient air monitoring, the difference that exists between $PM_{2.5}$ monitoring data at one receptor and a city-wide emission inventory appears to be plausible.

We also note that the actual location of the monitor may have exposed it to additional influence from motor vehicle emissions. We have not performed an in-depth analysis, but we do note that the monitor is located directly adjacent to U.S. Highway 2, the main north/south highway through Libby. Although motor vehicle $PM_{2.5}$ emissions are shown to be minimal in the State's emissions inventory (ref. Table 5.1A: "Seasonal $PM_{2.5}$ Emissions in Libby by Source Category" and Table V.7.-1 above), motor vehicle emissions may have shown a greater than anticipated contribution on the chemical mass balance analysis due to the monitor's close proximity to Highway 2.

Overall, this factor supports the proposed finding that on-road $PM_{2.5}$ emissions are insignificant for the Libby $PM_{2.5}$ nonattainment area. In summary, all four factors support the proposed finding. After weighing these four factors described in 40 CFR 93.109(m) and evaluated above, EPA proposes to find that on-road $PM_{2.5}$ emissions are insignificant for the Libby $PM_{2.5}$ nonattainment area. We turn to applying the four factors to on-road $NO_X$ emissions.

e. The Percentage of $NO_X$ Motor Vehicle Emissions in the Context of the Total SIP Inventory

The Libby attainment plan focuses on directly emitted $PM_{2.5}$ and controls of $PM_{2.5}$ emissions from woodstoves and does not address any motor vehicle $NO_X$ emissions other than to indicate in Table 27.12.11.4B "$PM_{2.5}$ Annual Demonstration of Compliance" that the CMB data show that ammonium nitrate was only 5% of the mass found on the filters. EPA, therefore, drew upon other relevant, available data to evaluate whether $NO_X$ motor vehicle emissions in the Libby $PM_{2.5}$ nonattainment area are significant and require that a $NO_X$ motor vehicle emissions budget be established for transportation conformity purposes or whether on-road $NO_X$ emissions could be found insignificant based on the criteria in 40 CFR 93.109(m).

EPA reviewed relevant information from EPA's National Emissions Inventory (NEI) data for 2005 that were used for the 2009 final designations for the 24-hour 2006 $PM_{2.5}$ NAAQS (74 FR 58688, November 13, 2009).[5] However, since the NEI data were for Lincoln County as a whole, we needed to assess how much of the Lincoln County on-road $NO_X$ inventory could be apportioned to the Libby $PM_{2.5}$ nonattainment area. Our methodology was to calculate how many vehicle miles traveled (VMT) the Libby $PM_{2.5}$ nonattainment area contributes to Lincoln County's total VMT and to assign that same proportion of the total Lincoln County on-road $NO_X$ emissions to the Libby $PM_{2.5}$ nonattainment area, as explained further below. We then needed to determine what percentage this was of total $NO_X$ from the Libby $PM_{2.5}$ nonattainment area.

Specific emissions data for Lincoln County, MT, which includes the Libby $PM_{2.5}$ nonattainment area, are presented in Table V.7.–2 below and are from EPA's $PM_{2.5}$ 24-hour 2006 NAAQS final designations information.

TABLE V.7.–2—(ALL EMISSION FIGURES ARE IN TONS PER YEAR)

| County | Major category | VOC | $NO_X$ | $SO_2$ | $NH_3$ | $PM_{2.5}$ | OC | EC | $SO_4$ | $NO_3$ | PMFine |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Lincoln | Fires | 6106 | 310 | 277 | 425 | 2199 | 1286 | 219 | 20 | 10 | 664 |
| Lincoln | Non-Road | 338 | 2403 | 169 | 1 | 76 | 16 | 55 | 0 | 0 | 4 |
| Lincoln | On-Road | 366 | 545 | 15 | 23 | 11 | 3 | 6 | 0 | 0 | 2 |
| Lincoln | Other-Stationary | 871 | 138 | 74 | 57 | 453 | 108 | 16 | 5 | 1 | 323 |
| Total | | 7681 | 3395 | 535 | 506 | 2738 | 1412 | 296 | 25 | 11 | 994 |

The "On-Road" or motor vehicle, 2005 NEI emissions were calculated by EPA for Lincoln County based on a county annual total of VMT of 231,246,800. This VMT figure, which represents data for the entire county, is also referenced in our 2006 $PM_{2.5}$ 24-hour NAAQS final designations information.[6]

Based on the 2005 NEI data referenced above in Table V.7.–2, Lincoln County's total annual VMT of 231,246,800 results in approximately 545 tpy of on-road $NO_X$. To calculate the estimated on-road $NO_X$ emissions for the Libby $PM_{2.5}$ nonattainment area, we first needed to determine what percentage of Lincoln County's total VMT is attributed to the Libby $PM_{2.5}$ nonattainment area. We then applied that VMT percentage to the total Lincoln County on-road $NO_X$ emissions to get the estimated on-road $NO_X$ emissions for the Libby $PM_{2.5}$ nonattainment area. The total VMT for the Libby $PM_{2.5}$ nonattainment area, 54,877,360, came from the MTDEQ.[7] This is 23.73% of Lincoln County's total VMT (i.e., 54,877,360 VMT from Libby divided by 231,246,800 VMT from Lincoln County as a whole). It is reasonable to assume that the Libby $PM_{2.5}$ nonattainment area contributes this same percentage of on-road $NO_X$ emissions to the total Lincoln County on-road $NO_X$ emissions. Therefore, we applied this 23.73% to the Lincoln County total of 545 tpy of

[5] The 2005 NEI data from EPA's $PM_{2.5}$ 24-hour 2006 NAAQS final designations information are available at: *http://www.epa.gov/ttn/naaqs/pm/pm25_2006_techinfo.html.*

[6] *See http://www.epa.gov/ttn/naaqs/pm/pm25_2006_techinfo.html;* Factor 4.B "Vehicle Miles Traveled".

[7] VMT data was communicated in a February 26, 2010, email from Jim Carlin of MTDEQ to Tim Russ of EPA Region 8.

on-road motor vehicle $NO_X$ emissions, which results in approximately 129.33 tpy of on-road $NO_X$ emissions for the Libby $PM_{2.5}$ nonattainment area. In lieu of other specific data, EPA considers this approach a reasonable estimate of the on-road $NO_X$ emissions for the Libby $PM_{2.5}$ nonattainment area.

Once we had a figure for the number of tons of on-road $NO_X$ emissions from Libby, the next step in our analysis was to determine what percentage of the total anthropogenic $NO_X$ this represents. Again, since the NEI data available were for Lincoln County as a whole, we needed to assess how much of the Lincoln County total anthropogenic $NO_X$ could be apportioned to the Libby $PM_{2.5}$ nonattainment area. To do so, we needed to establish what $NO_X$ emissions were from anthropogenic sources in the Libby $PM_{2.5}$ nonattainment area other than from on-road motor vehicle tailpipes. To develop these particular emissions figures, we assumed that the percentage of Lincoln County's anthropogenic $NO_X$ coming from Libby would be the same as the percentage of Lincoln County's anthropogenic $PM_{2.5}$ emissions coming from Libby, as described below.

First, we determined the anthropogenic $NO_X$ emissions for Lincoln County from the "Non-Road" and "Other Stationary" source categories. We used the data from Table V.7.–2 above and eliminated the "Fires"[8] and "On-Road" emissions categories from the Lincoln County 2005 NEI data (*see* Table V.7.-3 below):

TABLE V.7.–3—(ALL EMISSIONS ARE IN TONS PER YEAR)

| County | Major category | VOC | $NO_X$ | $SO_2$ | $NH_3$ | $PM_{2.5}$ | OC | EC | $SO_4$ | $NO_3$ | PM Fine |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Lincoln | Non-Road | 338 | 2403 | 169 | 1 | 76 | 16 | 55 | 0 | 0 | 4 |
| Lincoln | Other-Stationary | 871 | 138 | 74 | 57 | 453 | 108 | 16 | 5 | 1 | 323 |
| Total | | 1209 | 2541 | 243 | 58 | 529 | 124 | 71 | 5 | 1 | 327 |

The total anthropogenic $NO_X$ in Lincoln County from sources other than on-road is 2541 tpy.

Next, we summed-up the $PM_{2.5}$ emissions from the Libby $PM_{2.5}$ nonattainment area from the State's SIP emission inventory Table 5.1A, but did not include emissions from fires (*i.e.,* $PM_{2.5}$ emissions from "Large Prescribed Burning" and "General Burning" were not included from the State's Table 5.1A); *see* Table V.7.-4 below.

TABLE V.7.–4—LIBBY ANTHROPOGENIC $PM_{2.5}$ EMISSIONS

(As adapted from Table 5.1A "Seasonal $PM_{2.5}$ Emissions in Libby by Source Category" of the Libby Attainment SIP Emission Inventory)

| Sources | Winter | Spring | Summer | Fall |
|---|---|---|---|---|
| Woodstoves Residential/Com. | 66.65 | 20.74 | 5.08 | 58.76 |
| Paved Roads Fugitive Dust | 8.92 | 2.57 | 3.23 | 9.61 |
| Large Prescribed Burning | - - - | - - - | - - - | - - - |
| General Burning | - - - | - - - | - - - | - - - |
| Locomotives | 2.72 | 2.72 | 2.72 | 2.72 |
| Unpaved Roads Fugitive Dust | 1.22 | 1.34 | 1.53 | 1.2 |
| Propane Heating Residential/Com. | 0.13 | 0.04 | 0.01 | 0.11 |
| Oil Heating Residential/Com. | 0.48 | 0.15 | 0.04 | 0.42 |
| Aircraft | 0.0 | 0.03 | 0.03 | 0.0 |
| Road & Building Construction Dust | 0.02 | 0.36 | 0.36 | 0.36 |
| Motor Vehicle Tailpipe | 0.48 | 0.55 | 0.66 | 0.51 |
| Total (Metric Tons) | 80.62 | 28.50 | 13.66 | 73.69 |
| Total Short Tons (2000 lbs. per ton) | 88.88 | 31.42 | 15.06 | 81.24 |

Total Annual Anthropogenic Short Tons of $PM_{2.5}$ Emissions = 216.60 tons.

Based on the data in Table V.7.-4 above, the total annual anthropogenic short tons of $PM_{2.5}$ emissions (without including emissions from the "Motor Vehicle Tailpipe" category) from "Non-Road" and "Other Stationary" sources in the Libby $PM_{2.5}$ nonattainment area are estimated as 214.17 tons per year.

The Libby $PM_{2.5}$ nonattainment area's annual emissions of $PM_{2.5}$ from "Non-Road" and "Other Stationary" anthropogenic sources is 214.17 tpy, whereas these sources emit 529 tpy for Lincoln County as a whole (see Table V.7.-3 above). Therefore, Libby's share of Lincoln County's $PM_{2.5}$ emissions from "Non-Road" and "Other Stationary" anthropogenic sources is approximately 40.48%.

We then added Lincoln County $NO_X$ emissions from the "Non-Road" and "Other Stationary" sources categories, 2541 tpy (see Table V.7–3 above), and attributed 40.48% of those emissions to the Libby $PM_{2.5}$ nonattainment area's $NO_X$ "Non-Road" and "Other Stationary" sources categories, which results in 1028.6 tpy. To summarize, EPA estimated the Libby $PM_{2.5}$ nonattainment area's on-road $NO_X$ motor vehicle emissions as 129.33 tpy, and the non-road and other stationary sources' $NO_X$ emissions as 1028.6 tpy. Therefore, the total estimated annual anthropogenic $NO_X$ emissions from all of these source categories are estimated to be 1157.93 tpy for the Libby $PM_{2.5}$ nonattainment area. The approximate contribution of annual on-road $NO_X$ motor vehicle emissions (129.33 tpy) to the total estimated $NO_X$ annual anthropogenic emissions from all sources (1157.93 tpy) in the Libby $PM_{2.5}$ nonattainment area is 11.17% of the total inventory.

EPA indicated in its July 1, 2004 Transportation Conformity final rule (69 FR 40004) that mobile source emissions

[8] The "Fires" category of the 2005 NEI relates to wildfires, prescribed burns and such. This correlates to the "Large Prescribed Burning" and "General Burning" categories in the State's Table 5.1A.

of approximately 10% may be considered insignificant, but did not make 10% a specific threshold. While the 11.7% figure calculated for on-road $NO_X$ in the Libby $PM_{2.5}$ nonattainment area is slightly greater than this, in this same rulemaking EPA explained:

"This example also illustrates the reason EPA believes it is important to have flexibility in implementing this provision. Although the commenter specifically mentions 10% as the threshold for finding motor vehicle emissions insignificant, EPA clarifies that this figure is a general guideline only. Depending on the circumstances, we may find that motor vehicle emissions that make up less than 10% of an area's total inventory are still significant. Conversely, we may also find that motor vehicle emissions in excess of 10% are still insignificant, under certain circumstances relating to the overall composition of the air quality situation. In general, the percentage of motor vehicle emissions in the area's total inventory is an important criterion for determining whether motor vehicles are a significant or insignificant contributor to an area's air quality problem, yet there are other criteria that EPA will examine when making this finding, as described in the regulatory text for § 93.109(k)." (69 FR 40062) [9]

As stated in the 2004 preamble, 10 percent is a guideline only. As described below, EPA considered other factors that lead EPA to propose that motor vehicle emissions of $NO_X$ are an insignificant regional contributor to the $PM_{2.5}$ nonattainment problem.

f. The Current State of Air Quality as Determined by Monitoring Data for $PM_{2.5}$ NAAQS

This factor is addressed with the ambient $PM_{2.5}$ air quality data presented in section V.7.B above which demonstrate the Libby $PM_{2.5}$ nonattainment area is attaining the $PM_{2.5}$ annual NAAQS. Additional data, relevant to $NO_X$ or in this case nitrates derived from $NO_X$ emissions,[10] were provided by EPA with the 2009 final designations for the 24-hour 2006 $PM_{2.5}$ NAAQS. This information, as provided in Table V.7–5 below, is from EPA's $PM_{2.5}$ 24-hour 2006 NAAQS final designations and is located at: *http://www.epa.gov/ttn/naaqs/pm/pm25_2006_techinfo.html.*

TABLE V.7–5—$PM_{2.5}$ COMPOSITION DATA FOR LIBBY, MT

| Area/County/State | $PM_{2.5}$ composition data | Sulfate (μmg/m³) | Nitrate (μmg/m³) | Carbon (μmg/m³) | Crustal (μmg/m³) | Total (μmg/m³) | Nitrate percent | Carbon percent |
|---|---|---|---|---|---|---|---|---|
| Libby/Lincoln/MT ..... | Total Concentration (Cold) ..... | 1.4 | 0.8 | 41.9 | 0.3 | 44.4 | 2 | 94 |
| | Regional Concentration (Cold) | 0.9 | 0.4 | 2.4 | 0.2 | 3.9 | 10 | 62 |
| | Urban Concentration (Cold) .... | 0.5 | 0.4 | 39.5 | 0.1 | 40.5 | 1 | 98 |
| | Total Concentration (Warm) .... | 1.2 | 0.0 | 6.7 | 0.8 | 8.7 | 0 | 77 |
| | Regional Concentration (Warm). | 1.0 | 0.0 | 2.5 | 1.1 | 4.6 | 0 | 54 |
| | Urban Concentration (Warm) .. | 0.2 | 0.0 | 4.2 | 0.0 | 4.4 | 0 | 95 |
| | Total Concentration (Annual Average). | 1.0 | 0.1 | 12.8 | 0.4 | 14.3 | 1 | 90 |

As can be seen in Table V.7–5 above, nitrates (as derived from $NO_X$) are a very small component of the $PM_{2.5}$ composition found in the Libby $PM_{2.5}$ nonattainment area. Therefore, $NO_X$ as derived from motor vehicle tailpipe emissions also is a very small component. This factor thus supports the proposed finding that on-road $NO_X$ emissions are insignificant for the Libby $PM_{2.5}$ nonattainment area.

g. The Absence of SIP Motor Vehicle Control Measures for $NO_X$

As discussed in section V.7.C above, the Libby $PM_{2.5}$ attainment plan took no credit for any emission reductions in the motor vehicle tailpipe and diesel exhaust categories (*e.g.* Federal tailpipe emission standards and fleet turnover). The State further described these assumptions in sections 27.12.7.3 ("Federal Tailpipe Standards Control Program") and 27.12.11.4 ("$PM_{2.5}$ 2010 Demonstration of Compliance") of the Libby attainment plan. EPA also notes there is no State or local mandated motor vehicle emission control requirements (e.g., inspection and maintenance program, fuels, or transportation control measures) for the Libby $PM_{2.5}$ nonattainment area. Therefore this factor supports the proposed finding that on-road $NO_X$ emissions are insignificant for the Libby $PM_{2.5}$ nonattainment area.

h. Historical Trends and Future Projections of the Growth of $NO_X$ Motor Vehicle Emissions

As noted in our discussion in section V.7.D above, the Libby attainment plan uses a 59% reduction in residential woodstove emissions to reach attainment of the annual $PM_{2.5}$ NAAQS and took no credit for any emission reductions in the motor vehicle tailpipe and diesel exhaust categories. The State further described these assumptions in sections 27.12.7.3 ("Federal Tailpipe Standards Control Program") and 27.12.11.4 ("$PM_{2.5}$ 2010 Demonstration of Compliance") of the Libby attainment plan. EPA notes that the State used a conservative emission inventory approach for projecting the 2010 attainment year future growth which involved merely increasing the vehicle emissions by 2.1% (the population growth rate) from the 2005 base year inventory, and not taking any credit for potential emission reductions that may have been available from fleet turnover and the Federal tailpipe standards for vehicles. In addition, as we noted above, there are no State or local mandated motor vehicle emission control requirements (*e.g.,* inspection and maintenance program) for the Libby $PM_{2.5}$ nonattainment area.

This factor supports the proposed finding that on-road $NO_X$ emissions are insignificant for the Libby $PM_{2.5}$ nonattainment area. After weighing these four factors described in 40 CFR 93.109(m) and evaluated above, EPA proposes to find that on-road NOx emissions are insignificant for the Libby $PM_{2.5}$ nonattainment area.

i. Conclusion

In view of our evaluation presented above per 40 CFR 93.109(m), EPA is proposing to find that direct $PM_{2.5}$ and $NO_X$ motor vehicle emissions are an insignificant contributor to the air quality issues associated with the $PM_{2.5}$

[9] EPA redesignated the insignificance provision of the transportation conformity rule from 40 CFR 93.109(k) to 40 CFR 93.109(m) in its March 24, 2010 "PM Amendments" final rule (75 FR 14260).

[10] Nitrogen oxides react in the atmosphere to form nitrates. For our purposes, the impact of $NO_X$ emissions is measured as the amount of nitrates found at the $PM_{2.5}$ monitor.

annual NAAQS in the Libby $PM_{2.5}$ nonattainment area; thus, motor vehicle emission budgets for on-road direct $PM_{2.5}$ and $NO_X$ would not be established by this rulemaking. Based on our evaluation of the four factors described in 93.109(m), EPA proposes to conclude that it would be unreasonable to expect that the Libby $PM_{2.5}$ nonattainment area would experience enough motor vehicle emissions growth such that a $PM_{2.5}$ annual NAAQS violation would occur.

## VI. Proposed Action

The EPA has reviewed Montana's SIP revision for attaining the 15μg/$m^3$ annual $PM_{2.5}$ NAAQS for the Libby $PM_{2.5}$ nonattainment area. EPA is proposing to approve the State of Montana's revisions to the Lincoln County Air Pollution Control Program to be included in Montana's SIP, submitted on June 26, 2006, and the Libby $PM_{2.5}$ attainment plan, submitted on March 26, 2008. Action was not taken earlier on the June 26, 2006, submittal at the request of the State of Montana to delay action until the submittal of the Libby $PM_{2.5}$ attainment plan at a later date. EPA has determined that the SIP meets applicable requirements of the CAA, as described in the Clean Air Fine Particle Implementation Rule. Specifically, EPA has determined that Montana's SIP includes an attainment demonstration and adopted state regulations and programs needed to support the determination that the Libby $PM_{2.5}$ nonattainment area will continue attaining the annual $PM_{2.5}$ NAAQS. Finally, EPA is proposing to find on-road, directly emitted $PM_{2.5}$ and $NO_X$ in the Libby, Montana nonattainment area insignificant for regional transportation conformity purposes.

## VII. Statutory and Executive Order Reviews

### *A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order." The OMB has exempted this regulatory action from Executive Order 12866 review.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action proposes to approve the SIP revisions submitted by the State of Montana.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve or disapprove requirements that the state is already imposing. Therefore because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This Federal action proposes to partially approve and partially disapprove pre-existing requirements under state or local law, and to disapprove a redesignation request, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in

the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely proposes to partially approve and partially disapprove state rules implementing a Federal standard, and to disapprove a redesignation request, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled Consultation and Coordination With Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

*Protection of Children From Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it proposes to approve a state rule implementing a Federal program.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of nitrogen, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 2, 2010.

**Stephen S. Tuber,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2010–22848 Filed 9–13–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2010–0210; FRL–9201–3]**

## Approval and Promulgation of Air Quality Implementation Plans; Indiana; Kentucky; Louisville Nonattainment Area; Determination of Attainment of the Fine Particle Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the bi-state Louisville (Indiana and Kentucky) fine particle ($PM_{2.5}$) nonattainment area has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). This proposed determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 period showing that the area has monitored attainment of the annual $PM_{2.5}$ NAAQS. If EPA finalizes this proposed determination, the requirements for the area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended for so long as the area continues to attain the annual $PM_{2.5}$ NAAQS.

**DATES:** Comments must be received on or before October 14, 2010.

**ADDRESSES:** Submit your comments regarding the Indiana portion of the bi-state Louisville area, identified by Docket ID No. EPA–R05–OAR–2010–0210, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: bortzer.jay@epa.gov.*

3. *Fax:* (312) 692–2054.

4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of

business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Submit your comments regarding the Kentucky portion of the bi-state Louisville area, identified by Docket ID No. EPA–R05–OAR–2010–0210, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9040.
4. *Mail:* EPA–R05–OAR–2010–0210, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2010–0210. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Melissa M. Barnhart by phone at (312) 353–8641 or by e-mail at *barnhart.melissa@epa.gov* before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Melissa M. Barnhart, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8641, *barnhart.melissa@epa.gov.* In Region 4, contact Joel Huey, Environmental Scientist, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562–9104, *huey.joel@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

This supplementary information section is arranged as follows:



## I. What action is EPA taking?

EPA is proposing to determine that the Louisville $PM_{2.5}$ annual standard nonattainment area (which consists of portions in both Indiana and Kentucky) has attained the 1997 annual $PM_{2.5}$ NAAQS. The proposal is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period that show that the area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS.

## II. What is the background for this action?

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/$m^3$) based on a three-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour standard of 65 μg/$m^3$ (today's action does not address the 24-hour standard). See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Louisville area was designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. See 40 CFR 81.315 (Indiana) and 40 CFR 81.318 (Kentucky).

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/$m^3$ based on a three-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 μg/$m^3$ based on a three-year average of the 98th percentile of 24-hour concentrations. On November 13, 2009, EPA designated the Louisville area as attainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Louisville area was designated as nonattainment for the annual standard but attainment for the 24-hour standard. Thus, today's action does not address attainment of either the 1997 or the 2006 24-hour standard.

In response to legal challenges of the annual standard promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ standards. This rule, at 40 CFR 51.1004(c),

specifies some of the regulatory consequences of attaining the standard, as discussed below.

## III. Does the Louisville area meet the annual $PM_{2.5}$ standard?

### A. Criteria

Today's rulemaking assesses whether the Louisville $PM_{2.5}$ nonattainment area is attaining the 1997 annual $PM_{2.5}$ NAAQS. The Louisville nonattainment area includes certain counties in Indiana and in Kentucky. The Indiana portion of this area is defined at 40 CFR 81.315, and comprises Clark and Floyd Counties and a portion of Jefferson County (Madison Township). The Kentucky portion of this area is defined at 40 CFR 81.318, and includes Bullitt and Jefferson Counties.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area.

### B. Louisville Area Air Quality

EPA has reviewed the ambient air monitoring data for the Louisville area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System database. This review addresses air quality data collected in the three-year period from 2007 to 2009.

The following table provides the annual average concentrations averaged over 2007 to 2009 at all sites in the Louisville area with at least 75 percent complete data in each quarter for each of those three years, including sites in both Indiana and Kentucky. The highest three-year average annual concentration for 2007 to 2009 on this table is recorded at site 18–019–0006, recording a three-year average annual concentration of 14.6 $\mu g/m^3$. All sites in the area have three-year average annual $PM_{2.5}$ concentrations below 15.0 $\mu g/m^3$.

| Site name | County | Site No. | Annual average concentration ($\mu g/m^3$) |
|---|---|---|---|
| Jeffersonville | Clark, IN | 18–019–0006 | 14.6 |
| New Albany | Floyd, IN | 18–043–1004 | 13.1 |
| Shepherdsville | Bullitt, KY | 21–029–0006 | 13.0 |
| Wyandotte Park | Jefferson, KY | 21–111–0044 | 13.5 |
| 37th & Southern | Jefferson, KY | 21–111–0043 | 13.4 |
| Watson Elementary | Jefferson, KY | 21–111–0051 | 13.0 |

In addition to the sites listed in the table above, three sites, Barret Avenue, Cannons Lane, and Indiana Armory, did not operate for the entire three-year period from 2007 to 2009, either because the site ended operation before the end of that period or because the site began operation after the beginning of that period.

The first of these three sites, Barret Avenue (site number 21–111–0048), ended operation at the end of 2008.[1] Thus, the most recent three-year period of data for this site is 2006 to 2008. For this period, the Barret Avenue site monitored an average annual concentration of 14.1 $\mu g/m^3$, reflecting attainment of the standard. The Barret Avenue site has not historically monitored the highest concentrations in the area. In addition, the other sites in the area, which have continued to operate, are currently attaining the standard and are showing decreased concentrations. Thus, EPA believes that the standard was and continues to be attained at this site.

More generally, EPA believes that the Louisville area has a sufficient network of sites collecting complete data showing attainment to conclude that the Louisville area is now meeting the annual $PM_{2.5}$ NAAQS.

Following discontinuation of the Barret Avenue site, two new sites began operation. The Indiana Armory site (site number 18–019–0008) began operation in the third quarter of 2008, and the Cannons Lane site (site number 21–111–0067) began operation at the beginning of 2009. These two sites started operation after 2007 and thus have not yet collected three years of data. Nevertheless, EPA examined the data at these sites to consider whether these data are consistent with the findings discussed above that were derived for sites with a complete three-year set of data for the 2007–2009 period.

An examination of data from these two sites (as well as an examination of data at the Barret Avenue site) is provided in a memorandum (available in the docket for this proposed rulemaking) dated June 22, 2010. The Indiana Armory site monitored an average concentration in the second half of 2008 of 13.4 $\mu g/m^3$, and an annual average concentration in 2009 of 10.8 $\mu g/m^3$. The Cannons Lane site for 2009 monitored an annual average concentration of 11.7 $\mu g/m^3$. All of these values are below the standard.

Since few data are available for 2010, the 2007 to 2009 data represent the most recent available data for EPA to use in its assessment. On the basis of this review, EPA is proposing to determine that the Louisville area has attained the 1997 annual $PM_{2.5}$ NAAQS.

EPA is soliciting public comments on its proposal to determine that the Louisville area has attained the 1997 annual $PM_{2.5}$ NAAQS.

## IV. What is the effect of this action?

If this proposed determination is made final, the requirements for the Louisville $PM_{2.5}$ nonattainment area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS would be suspended for so long as the area continues to attain the $PM_{2.5}$ NAAQS. See 40 CFR 51.1004(c). Notably, as described below, any such determination would not be equivalent to the redesignation of the area to attainment for the annual $PM_{2.5}$ NAAQS.

If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Louisville nonattainment area, and the area would thereafter have to address the applicable requirements. See 40 CFR 51.1004(c).

Finalizing this proposed action would not constitute a redesignation of the area to attainment of the annual $PM_{2.5}$

[1] In letters dated November 4, 2008, and January 28, 2009, to the Louisville Metro Air Pollution Control District, EPA approved the District's request to terminate the operation of the Barret Avenue monitor for safety reasons, and to establish a new monitor starting operation January 1, 2009, at the Cannons Lane site, approximately 4 miles away.

NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this proposed action does not involve approving maintenance plans for the area as required under section 175A of the CAA, nor would it find that the area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Louisville area would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the area.

This action is only a proposed determination that the Louisville area has attained the 1997 annual $PM_{2.5}$ NAAQS. Today's action does not address the 24-hour $PM_{2.5}$ NAAQS.

If the Louisville area continues to monitor attainment of the annual $PM_{2.5}$ NAAQS, the requirements for the Louisville area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the annual $PM_{2.5}$ NAAQS will remain suspended.

## V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal applications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks" (62 FR 19885, April 23, 1997) because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA. This proposed rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under Executive Order 12898, EPA finds that this rule, pertaining to the determination of attainment of the fine particle standard for the bi-state Louisville (Indiana and Kentucky) area, involves proposed determinations of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 9, 2010.

**Susan Hedman,**

*Regional Administrator, Region 5.*

Dated: August 27, 2010.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2010–22850 Filed 9–13–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 799

**[EPA–HQ–OPPT–2009–0555; FRL–8428–8]**

**RIN 2070–AB79 and RIN 2070–AC76**

## Withdrawal of Proposed Rules; Discontinuing Rulemaking Efforts Listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rules; withdrawals.

**SUMMARY:** EPA is withdrawing two proposed rules for which the Agency no longer intends to issue a final rule. This document identifies the proposed rules and explains the Agency's decision not to pursue a final rulemaking at this time. This withdrawal of these proposed rules does not preclude the Agency from initiating the same or similar rulemaking at a future date. It does, however, close out the entry for these proposed rules in the EPA Semi-Annual Regulatory Agenda, published as part of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). Should the Agency decide at some future date to initiate the same or similar rulemaking, it will add an appropriate new entry to the EPA Semi-Annual Regulatory Agenda to reflect the initiation of the action.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2009–0555. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the docket index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required

to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact*: Robert Jones, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8161; e-mail address: *jones.robert@epa.gov*.

*For general information contact*: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who follow proposed rules issued under the Toxic Substances Control Act (TSCA). Since others may also be interested, the Agency has not attempted to describe all the specific entities potentially interested.

## II. Why is EPA Issuing this Withdrawal Document?

This document serves two purposes:

1. It announces to the public that EPA is withdrawing certain proposed rules for which the Agency no longer intends to issue a final rule .

2. It officially terminates the ongoing rulemaking activities, which allows the Agency to close out the individual rulemaking entries for these actions that appear in the Agency's Semi-Annual Regulatory Agenda.

All agencies publish Semi-Annual Regulatory Agendas describing regulatory actions they are developing or have recently completed. These Semi-Annual Regulatory Agendas are published in the **Federal Register**, usually during the spring and fall of each year, as part of the Unified Agenda. The Agency publishes the EPA Semi-Annual Regulatory Agenda to update the public about: Regulations and major policies currently under development, reviews of existing regulations and major policies, and rules and major policies completed or canceled since the last Semi-Annual Regulatory Agenda. (See *http://www.epa.gov/lawsregs/search/regagenda.html*.)

We believe our actions will be more cost-effective and protective if our development process includes stakeholders working with us to identify the most practical and effective solutions to problems and we stress this point most strongly in all of our training programs for rule and policy developers. The Semi-Annual Regulatory Agenda is often used as a tool to solicit interest and participation from stakeholders. As such, EPA believes that the public is best served by a Semi-Annual Regulatory Agenda that reflects active rulemaking efforts. The withdrawal of these inactive rulemaking efforts will streamline the Semi-Annual Regulatory Agenda and allow the public to better identify and focus on those rulemaking activities that are active.

For the individual reasons described in this document, the Agency has decided not to complete these actions at this time. By withdrawing the proposed rules, the Agency is eliminating the pending nature of that regulatory action. Should the Agency determine to pursue anything in these areas in the future, it will issue a new proposed rule and create a new entry in the Agency's Semi-Annual Regulatory Agenda.

## III. Which Rulemakings are Being Withdrawn?

The following two proposed rules are being withdrawn. The titles match that used in the Semi-Annual Regulatory Agenda, and the "RIN" refers to the regulatory identifier number assigned to the rulemaking effort in the Semi-Annual Regulatory Agenda.

### *A. The Proposed Test Rule for Certain Chemicals on the ATSDR/EPA CERCLA Priority List of Hazardous Substances (RIN 2070–AB79)*

1. *What was proposed?* In the **Federal Register** issue of October 20, 2006 (71 FR 61926) (FRL–8081–3), EPA published the "Proposed Test Rule for Certain Chemicals on the ATSDR/EPA CERCLA Priority List of Hazardous Substances" for the consideration of testing for four chemicals (chloroethane, hydrogen cyanide, methylene chloride, and sodium cyanide). The chemicals are listed on the Agency for Toxic Substances and Disease Registry (ATSDR)/EPA priority list of hazardous substances which is compiled under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).

2. *Why is it being withdrawn?* In the proposal for this test rule, EPA explained that the reason EPA proposed to use its authority under section 4 of TSCA was to support ATSDR's Substance Specific Applied Research Program, a program for collecting data and other information needed for developing health assessments pursuant to CERCLA, 42 U.S.C. 9601 *et seq*. ATSDR had referred the chemicals subject to the proposed rule to EPA under authority of section 104(i) of CERCLA, 42 U.S.C. 9604(i). Since then, ATSDR has informed EPA that it no longer needs EPA to finalize this proposed rule. Therefore, OPPT is withdrawing this proposed test rule and removing it from the EPA Semi-Annual Regulatory Agenda.

3. *Where can I get more information about this action?* EPA established a docket for this action under docket ID number EPA–HQ–OPPT–2002–0073, which is available at regulations.gov. See **ADDRESSES** for more detailed information about this docket.

### *B. The Proposed Test Rule for Hazardous Air Pollutants (RIN 2070–AC76)*

1. *What was proposed?* In the **Federal Register** issue of June 26, 1996 (61 FR 33177) (FRL–4869–1), EPA published the "Proposed Test Rule for Hazardous Air Pollutants" (HAPs). This document proposed using EPA's authority under section 4 of TSCA for testing 21 chemicals that are listed as hazardous air pollutants under section 112 of the Clean Air Act (CAA) and solicited proposals for enforceable consent agreements.

2. *Why is it being withdrawn?* EPA's Office of Air and Radiation (OAR), along with EPA's Office of Research and Development (ORD), referred the chemicals subject to this proposed rule to OPPT for obtaining certain health effects data to assess the risk remaining after the imposition of technology-based emissions standards required by CAA section 112(d), 42 U.S.C. 7412(d). OPPT explained that the reason it proposed to use EPA's authority under section 4 of TSCA was to support OAR and ORD in meeting EPA's statutory obligation under CAA section 112(f), 42 U.S.C. 7412(f). After the proposal was issued in 1996, OAR and ORD informed OPPT that they no longer support the need for a final rule. Additionally, OPPT has determined that the record does not address scientific information developed since the original proposal was issued in 1996. Therefore OPPT is withdrawing this proposed test rule and removing it from the EPA Semi-Annual Regulatory Agenda.

3. *Where can I get more information about this action?* EPA established a docket for this action under docket control number OPPTS–42187, which is available at regulations.gov. See **ADDRESSES** for more detailed information about this docket.

**List of Subjects in 40 CFR Part 799**

Environmental protection, Chemicals, Hazardous substances, Health, Reporting and recordkeeping requirements.

Dated: September 8, 2010.

**Stephen A. Owens,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2010–22862 Filed 9–13–10; 8:45 am]

**BILLING CODE 6560–50–S**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R3–ES–2010–0062; 92220–1113–0000–C6]**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions To Delist the Gray Wolf in Minnesota, Wisconsin, Michigan, and the Western Great Lakes

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a 90-day finding on petitions to remove (delist) the gray wolf in the western Great Lakes from the List of Endangered and Threatened Wildlife (List) established under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions present substantial scientific or commercial information indicating that removing the gray wolf in Minnesota, Wisconsin, and Michigan from the List may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if delisting in Minnesota, Wisconsin, and Michigan is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the gray wolf in Minnesota, Wisconsin, and Michigan. Based on the status review, we will issue a 12-month finding on the petitions, which will address whether any of the petitioned actions are warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before November 15, 2010. Please note that if you are using the Federal eRulemaking Portal (*see* **ADDRESSES** section, below), the deadline for submitting an electronic comment is 12:00 Midnight, Eastern Standard Time on this date.

**ADDRESSES:** You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is [FWS–R3–ES–2010–0062]. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R3–ES–2010–0062, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the **Request for Information** section below for more details).

After the date specified in **DATES**, you must submit information directly to the Regional Office (*see* **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

**FOR FURTHER INFORMATION CONTACT:** Laura Ragan, Endangered Species Listing Coordinator, Midwest Regional Office, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota, 55111, by telephone (612–713–5350), or by facsimile (612–713–5292). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Request for Information

When we make a finding that a petition to remove (delist) a species from the List of Endangered and Threatened Wildlife presents substantial information that the petitioned action may be warranted, we are required to promptly commence a review of the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the gray wolf in Minnesota, Wisconsin, and Michigan from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat or both.

(2) The factors that are the basis for making a delisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Current or planned activities in the western Great Lakes region and their possible impacts on the wolf and its habitat;

(4) Information concerning the adequacy of the recovery criteria described in the 1992 Recovery Plan for the Eastern Timber Wolf;

(5) The extent and adequacy of Federal, State, and tribal protection and management that would be provided to the wolf in the western Great Lakes region as a delisted species;

(6) Whether gray wolves in Minnesota alone; or in Minnesota and Wisconsin combined; or in Minnesota, Wisconsin, and Michigan combined constitute distinct population segments or entities that which may be removed from the List of Endangered and Threatened Wildlife under the Act; and

(7) Information or data regarding the taxonomy of wolves in the western Great Lakes region.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or

threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Midwest Regional Office (*see* **FOR FURTHER INFORMATION CONTACT**).

**Background**

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

*Petition History*

On March 15, 2010, we received a petition from the Minnesota Department of Natural Resources (MNDNR) requesting that the gray wolf in Minnesota be removed from the lists of endangered or threatened species under the Act. In an April 16, 2010, letter to the MNDNR, we responded that we received the petition and provided an explanation of the petition process. On April 26, 2010, we received a petition from the Wisconsin Department of Natural Resources (WIDNR) requesting that the gray wolf in Minnesota and Wisconsin be removed from the lists of endangered or threatened species under the Act. In a May 14, 2010 letter, to the WIDNR, we responded that we received the petition and provided an explanation of the petition process. On April 26, 2010, we received a petition from the U.S. Sportsmen's Alliance, representing five other organizations, requesting that gray wolves in the Great Lakes area be removed from the lists of endangered or threatened species under the Act. In a May 28, 2010, letter to the U.S. Sportsmen's Alliance, we responded that we received the petition and provided an explanation of the petition process. On June 17, 2010, we received a petition from Safari Club International, Safari Club International Foundation and the National Rifle Association of America requesting that wolves of the western Great Lakes be removed from the list of endangered and threatened species. In a June 30, 2010, letter to the Safari Club International we responded that we received the petition and provided an explanation of the petition process.

All of the petitions clearly identified themselves as such and included the requisite identification information from the petitioner, as required by 50 CFR 424.14(a). This finding addresses the four petitions.

*Previous Federal Actions*

The eastern timber wolf (*Canis lupus lycaon*) was listed as endangered in Minnesota and Michigan, and the northern Rocky Mountain wolf (*C. l. irremotus*) was listed as endangered in Montana and Wyoming in the first list of species that were protected under the 1973 Act, published in May 1974 (USDI 1974). A third gray wolf subspecies, the Mexican wolf (*C. l. baileyi*), was listed as endangered on April 28, 1976, (41 FR 17736) with its known range given as "Mexico, USA (Arizona, New Mexico, Texas)." On June 14, 1976, (41 FR 240624) the subspecies *C. l. monstrabilis* was listed as endangered (under the misleading common name "Gray wolf"), and its range was described as "Texas, New Mexico, Mexico."

On March 9, 1978, we published a rule (43 FR 9607) relisting the gray wolf at the species level (*Canis lupus*) as endangered throughout the conterminous 48 States and Mexico, except for Minnesota, where the gray wolf was reclassified to threatened. In addition, critical habitat was designated in that rulemaking. In 50 CFR 17.95(a), we describe Isle Royale National Park, Michigan, and Minnesota wolf management zones 1, 2, and 3 (delineated in 50 CFR 17.40(d)(1)) as critical habitat. At that time we also developed special regulations under section 4(d) of the Act for managing wolves in Minnesota. The depredation control portion of the special regulation was later modified (50 FR 50792; December 12, 1985); these special regulations are found in 50 CFR 17.40(d)(2).

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States (68 FR 15804). Within that rule, we identified three distinct population segments (DPS) for the gray wolf. Gray wolves in the Western DPS and the Eastern DPS were reclassified from endangered to threatened, except where already classified as threatened or as an experimental population. Gray wolves in the Southwestern DPS retained their previous endangered or experimental population status. The three existing gray wolf experimental population designations were not affected by the April 1, 2003, final rule. We removed gray wolves from the lists of threatened and endangered wildlife in all or parts of 16 southern and eastern States where the species historically did not occur. We also established a new special rule under section 4(d) of the Act for the threatened Western DPS to increase our ability to effectively manage wolf–human conflicts outside the two experimental population areas in the Western DPS. In addition, we established a second section 4(d) rule that applied provisions similar to those previously in effect in Minnesota to most of the Eastern DPS. These two special rules were codified in 50 CFR 17.40(n) and (o), respectively.

On January 31, 2005, and August 19, 2005, U.S. District Courts in Oregon and Vermont, respectively, ruled that the April 1, 2003, final rule violated the Act (*Defenders of Wildlife* v. *Secretary, U.S. Dep't of the Interior,* 354 F.Supp.2d 1156 (D.Or. 2005); *National Wildlife Fed'n* v. *Norton,* 386 F.Supp.2d 553 (D.Vt. 2005) . The Courts' rulings invalidated the revisions to the gray wolf listing. Therefore, the status of gray wolves outside of Minnesota and outside of areas designated as nonessential experimental populations reverted back to endangered (as had been the case prior to the 2003

reclassification). The courts also invalidated the associated special regulations.

On March 27, 2006, we published a proposal (71 FR 15266–15305) to identify a Western Great Lakes (WGL) DPS of the gray wolf, to remove the WGL DPS from the protections of the Act, to remove designated critical habitat for the gray wolf in Minnesota and Michigan, and to remove special regulations for the gray wolf in Minnesota. The proposal was followed by a 90-day comment period, during which we held four public hearings on the proposal.

On February 8, 2007, we published a final rule identifying a WGL DPS of the gray wolf, removing the WGL DPS from the protections of the Act, removing designated critical habitat for the gray wolf in Minnesota and Michigan, and removing special regulations for the gray wolf in Minnesota (72 FR 6052).

On April 16, 2007, four parties filed a lawsuit against the U.S. Department of the Interior (Department) and the Service, challenging the Service's February 8, 2007 (72 FR 6052), identification and delisting of the WGL DPS. The plaintiffs argued that the Service may not identify a DPS within a broader pre-existing listed entity for the purpose of delisting the DPS. Based on this argument, on September 29, 2008, the U.S. District Court for the District of Columbia remanded and vacated the February 8, 2007, WGL DPS final rule (72 FR 6052). The court found that the Service had made that decision based on its interpretation that the plain meaning of the Act authorizes the Service to identify and delist a DPS within an already-listed entity. The court disagreed, and concluded that the Act is ambiguous as to whether the Service has this authority. The court accordingly remanded the final rule so that the Service could provide a reasoned explanation of how its interpretation is consistent with the text, structure, legislative history, judicial interpretations, and policy objectives of the Act (*Humane Society of the United States* v. *Kempthorne,* 579 F. Supp. 2d 7 (D.D.C. 2008).

On December 11, 2008, we published a final rule reinstating protections for the gray wolf in the western Great Lakes and northern Rocky Mountains pursuant to court-orders (73 FR 75356).

On April 2, 2009, we published a final rule identifying the western Great Lakes populations of gray wolves as a DPS, revising the List of Endangered and Threatened Wildlife by removing the DPS from that list, removing designated critical habitat for the gray wolf in Minnesota and Michigan, and removing special regulations for the gray wolf in Minnesota (74 FR 15070). That final rule addressed the narrow issue objectionable to the court and was otherwise substantially the same as the 2007 vacated rule. We did not seek additional public comment on the 2009 final rule.

On June 15, 2009, five parties filed a complaint against the Department and the Service alleging that we violated the Endangered Species Act, the Administrative Procedure Act (APA), and the Court's Remand Order by publishing the 2009 final rule. *The Humane Society, et al.* v. *Salazar,* 09–cv–1092 (D.D.C. 2009). On that same day, the plaintiffs also filed a motion for preliminary injunction alleging that we violated the notice and comment requirement of the APA, the Endangered Species Act's requirement that we consider the best available science, and the court's remand order by publishing the 2009 final rule. We conceded that we erred by publishing the 2009 final rule without providing for notice and comment as required by APA (5 U.S.C. 553). On July 2, 2009, a settlement agreement between the parties was signed by the court, remanding and vacating the 2009 final rule.

On September 16, 2009, we published a final rule reinstating protections for the gray wolf in the western Great Lakes pursuant to the settlement agreement and court-order (74 FR 47483).

*Species Information*

For a discussion of the biology and ecology of gray wolves and general recovery planning efforts, see the proposed WGL wolf rule published on March 27, 2006, (71 FR 15266–15305), also available on *http://www.fws.gov/midwest/wolf/.*

*Defining a Species Under the Act*

Section 3(16) of the Act defines "species" to include "any species or subspecies of fish and wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature" (16 U.S.C. 1532 (16)). Our implementing regulations at 50 CFR 424.02 provide further guidance for determining whether a particular taxon or population is a species or subspecies for the purposes of the Act: "The Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group" (50 CFR 424.11).

To interpret and implement the distinct vertebrate population segment (DPS) provisions of the Act and Congressional guidance, the Service and the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), published the *Policy Regarding the Recognition of Distinct Vertebrate Population Segments* (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS Policy, three elements are considered in the decision regarding the establishment and classification of a population of a vertebrate species as a possible DPS. Similarly, these three elements are applied for additions to and removals from the List of Endangered and Threatened Wildlife and Plants. These elements are: (1) The discreteness of a population in relation to the remainder of the species to which it belongs, (2) the significance of the population segment to the species to which it belongs, and, if these first two criteria are met, (3) the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification.

**Discreteness**

Under our DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act (61 FR 4722).

**Significance**

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity (see Senate Report 151, 96th Congress, 1st Session). In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete

population. However, the DPS policy describes four possible classes of information that provide evidence of a discrete population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy, this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

*Information Provided in the Petitions Regarding the "Species" Requested for Delisting*

Wolves in Minnesota

The petition from the Minnesota DNR requests removing the "Minnesota wolf species" from the protections of the Act. The petition presents the following information.

In 1978, the Service issued a final rule reclassifying "the gray wolf in the United States and Mexico" and determining critical habitat for the species of gray wolf in Michigan and Minnesota (43 FR 9607). The rule stated, "(t)he reclassification is considered to accurately express the current status of the gray wolf, based solely on an evaluation of the best available biological data."

As stated in Minnesota's March 15, 2010, petition, the Service in 1978 issued a final rule that listed the gray wolf population in Minnesota as threatened and treated the gray wolf in Minnesota as another "species" separate from the gray wolf species that was listed as endangered in the other conterminous 48 States and Mexico (43 FR 9607, March 9, 1978). The 1978 final rule states, "as defined in section 3 of the Act, the term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature. For purposes of this rulemaking, the gray wolf (*Canis lupus*) group in Mexico and the 48 coterminous States of the United States, other than Minnesota, is being considered as one 'species', and the gray wolf group in Minnesota is being considered as another 'species.'" (43 FR 9610).

The 1978 rule stated that this determination was "based solely on an evaluation of the best available biological data.* * * The only major population of the gray wolf remaining anywhere in the 48 conterminous States is in northern Minnesota." *Id.* at 9607 & 9610–11.

Wolves in Minnesota and Wisconsin

The petition from the Wisconsin DNR requests removing the "Minnesota wolf species," which occurs in Minnesota and Wisconsin, from the protections of the Act. The petition presents the following information.

Gray wolves moved from Minnesota to Wisconsin and Michigan, and are now established in those states. Minnesota gray wolves settled into eastern Pine County along the border with Wisconsin in 1974–1975 (Mech and Nowak 1981, pp. 408–409) and soon spread eastward into Wisconsin. Movements of wolves from Minnesota into Wisconsin and Michigan continued to be documented into the 1990s (Mech et al. 1995; Wydeven 1994). More recent genetic analysis also demonstrates that the wolves currently in Wisconsin and Michigan are genetically similar to wolves in Minnesota (Wheeldon 2009; Fain *et al.* 2010).

Wolves in Minnesota, Wisconsin, and Michigan

The petition from the U.S. Sportsmen's Alliance requests removing gray wolves in Minnesota, Wisconsin, and Michigan from the protections of the Act. In the alternative, they request removing gray wolves within the somewhat broader boundaries of the Western Great Lakes Distinct Population Segment (DPS), as identified in the 2007 and 2009 final rules (72 FR 6052, February 8, 2007; 74 FR 15070, April 2, 2009) that were later vacated. The petition references information provided in the petitions from Minnesota and Wisconsin and in the 2007 and 2009 final rules.

We find that the four petitions provide substantial information that the wolf in Minnesota alone; in Minnesota and Wisconsin combined; in Minnesota, Wisconsin, and Michigan; and in the western Great Lakes area, may be considered as a "species" under the Act. In the 12-month finding, we will fully analyze whether gray wolves in those areas constitute "species" under the Act, and whether they are a threatened species or endangered species under the Act.

**Evaluation of Information for This Finding**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered species or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We must consider these same five factors in delisting a species. We may remove a threatened species or endangered species from the Act's protections according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

(1) The species is extinct;

(2) The species has recovered and is no longer endangered or threatened; or

(3) The original scientific data used at the time the species was classified were in error.

In making this 90-day finding, we evaluated whether information regarding the reduction of threats to the gray wolf in Minnesota, Wisconsin, Michigan, and the western Great Lakes area as a whole as presented in the petitions and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted.

We reviewed the relevant five factors extensively in previous delisting decisions for the gray wolf in an area previously identified as the WGL DPS, which includes Minnesota, Wisconsin, and Michigan (71 FR 15266, March 27, 2006; 74 FR 15070, April 2, 2009). Our files have no information to indicate there has been a significant change since those previous analyses in how these factors affect wolves in the western Great Lakes area. We find that the information provided in the petition, as

well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted in light of one or more of the five factors described in section 4(a)(1) of the Act.

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range:* The wolf population in the western Great Lakes area currently occupies all suitable habitat identified for recovery in this area in the 1978 and 1992 Recovery Plans and most of the potentially suitable habitat in the States of Minnesota, Wisconsin, and Michigan. Unsuitable habitat, and the small fragmented areas of suitable habitat away from these core areas, are areas where viable wolf populations are unlikely to develop and persist. Although they may have been historical habitat, many of these areas are no longer suitable for wolves, and none of them are important to meet the biological needs of the species.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes:* No wolves have been legally removed from the wild for educational purposes in recent years. Wolves that have been used for such purposes are the captive-reared offspring of wolves that were already in captivity for other reasons, and this is not likely to change as a result of Federal delisting. We do not expect taking for educational purposes to constitute any threat to wolf populations in the western Great Lakes area for the foreseeable future. See Factor E for a discussion of taking of gray wolves by Native Americans for religious, spiritual, or traditional cultural purposes. See the Depredation Control Programs sections under Factor D for discussion of other past, current, and potential future forms of intentional and accidental take by humans, including depredation control, public safety, and under public harvest. While public harvest may include recreational harvest, public harvest may also serve as a management tool, so it is discussed in Factor D. Taking wolves for scientific or educational purposes in the western Great Lakes area may not be regulated or closely monitored in the future, but the threat to wolves in Minnesota, Wisconsin, and Michigan will not be significant to the long-term viability of the wolf population in the western Great Lakes area. The potential limited commercial and recreational harvest that may occur will be regulated by State or Tribal conservation agencies and is discussed under Factor D.

*C. Disease or Predation:* Several diseases have had noticeable impacts on wolf population growth in the Great Lakes region in the past. These impacts have been both direct, resulting in mortality of individual wolves, and indirect, by reducing longevity and fecundity of individuals or entire packs or populations. Canine parvovirus stalled wolf population growth in Wisconsin in the early and mid-1980s and has been implicated in the decline in the mid-1980s of the isolated Isle Royale wolf population in Michigan, and in attenuating wolf population growth in Minnesota (Mech in litt. 2006). Sarcoptic mange has affected wolf recovery in Michigan's Upper Peninsula and in Wisconsin over the last 12 years, and it is recognized as a continuing issue. Despite these and other diseases and parasites, the overall trend for wolf populations in the Western Great Lakes area continues to be upward. Wolf management plans for Minnesota, Michigan, and Wisconsin include disease-monitoring components that we expect will identify future disease and parasite problems in time to allow corrective action to avoid a significant decline in overall population viability.

The high reproductive potential of wolves allows wolf populations to withstand relatively high mortality rates, including human-caused mortality. The principle of compensatory mortality is believed to occur in wolf populations. This means that human-caused mortality is not simply added to "natural" mortality, but rather replaces a portion of it. For example, some of the wolves that are killed during depredation control actions would have otherwise died during that year from disease, intraspecific strife, or starvation. Thus, the addition of intentional killing of wolves to a wolf population will reduce the mortality rates from other causes on the population. Based on 19 studies by other wolf researchers, Fuller *et al.* (2003, pp. 182–186) concludes that human-caused mortality can replace about 70 percent of other forms of mortality.

Fuller *et al.* (2003, p. 182 Table 6.8) has summarized the work of various researchers in estimating mortality rates, especially human harvest, that would result in wolf population stability or decline. They provide a number of human-caused and total mortality rate estimates and the observed population effects in wolf populations in the United States and Canada. While variability is apparent, in general, wolf populations increased if their total average annual mortality was 30 percent or less, and populations decreased if their total average annual mortality was 40 percent or more. Four of the cited studies showed wolf population stability or increases with human-caused mortality rates of 24 to 30 percent. The clear conclusion is that a wolf population with high pup productivity—the normal situation in a wolf population—can withstand levels of overall and of human-caused mortality without suffering a long-term decline in numbers.

The wolf populations in Minnesota, Wisconsin, and Michigan will stop growing when they have saturated the suitable habitat and are curtailed in less suitable areas by natural mortality (disease, starvation, and intraspecific aggression), depredation management, incidental mortality (*e.g.,* road kill), illegal killing, and other means. At that time, we should expect to see population declines in some years followed by short-term increases in other years, resulting from fluctuations in birth and mortality rates. Adequate wolf monitoring programs, however, as described in the Michigan, Wisconsin, and Minnesota wolf management plans are likely to identify high mortality rates or low birth rates that warrant corrective action by the management agencies. The goals of all three State wolf management plans are to maintain wolf populations consistent with or above the objectives in the Federal Eastern Timberwolf Recovery Plan to ensure long-term, viable wolf populations. The State management plans recommend a minimum wolf population of 1,600 in Minnesota, 350 in Wisconsin, and 200 in Michigan.

Despite human-caused mortalities of wolves in Minnesota, Wisconsin, and Michigan, these wolf populations have continued to increase in both numbers and range. As long as other mortality factors do not increase significantly and monitoring is adequate to document, and if necessary counteract, the effects of excessive human-caused mortality should that occur, the Minnesota–Wisconsin–Michigan wolf population will not decline to nonviable levels in the foreseeable future as a result of human-caused killing or other forms of predation.

*D. The Inadequacy of Existing Regulatory Mechanisms:* The wolf management plans currently in place for Minnesota, Wisconsin, and Michigan will be more than sufficient to retain viable wolf populations in each State, and even for three completely isolated wolf populations. These State plans provide a very high level of assurance that wolf populations in these three States will not decline to nonviable levels in the foreseeable future. While these State plans recognize there may be a need to control or even reduce wolf

populations at some future time, none of the plans include a public harvest of wolves.

Wolves in Minnesota, Wisconsin, and Michigan would continue to receive protection from general human persecution by State laws and regulations. Michigan met the criteria established in their management plan for State delisting and in April 2009 removed gray wolves from the State's threatened and endangered species list and amended the Wildlife Conservation Order to grant "protected animal" status to the gray wolf in the State (Roell 2009, pers. comm.). That status "prohibit[s] take, establish[es] penalties and restitution for violations of the Order, and detail[s] conditions under which lethal depredation control measures could be implemented" (Humphries in litt. 2004). Since 2004 wolves have been listed as a "protected wild animal" by the WI DNR, allowing no lethal take unless special authorization is requested from the WI DNR (Wydeven *et al.* 2009c). Following Federal delisting, Wisconsin will fully implement that "protected wild animal" status for the species, including protections that provide for fines of $1,000 to $2,000 for unlawful hunting. Minnesota DNR will consider population management measures, including public hunting and trapping, but this will not occur sooner than 5 years after a Federal delisting and will maintain a wolf population of at least 1600 animals (MN DNR 2001, p. 2). In the meantime, wolves in Zone A could be legally taken in Minnesota only for depredation management or public safety (MN DNR 2001, pp. 3–4). Since the wolf management plan was completed in 2001, MN DNR has fully staffed its conservation officer corps in the State's wolf range (Stark 2009a, pers. comm.).

Additionally, although to our knowledge no Tribes have completed wolf management plans at this time, based on communications with Tribes and Tribal organizations, federally-delisted wolves are very likely to be adequately protected on Tribal lands. In addition, on the basis of information received from other Federal land management agencies in Minnesota, Wisconsin, and Michigan, we expect National Forests, units of the National Park System, military bases, and National Wildlife Refuges will provide protections to gray wolves after delisting that will match, and in some cases will exceed, the protections provided by State wolf management plans and State protective regulations.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence:* The information contained within the petitions and our files conclude that other natural or manmade factors may not be threats sufficient to cause the wolves in the western Great Lakes area to warrant listing; this includes taking of wolves by Native Americans for religious, spiritual, or traditional cultural purposes, public attitudes toward the gray wolf, and coyote hybridization. If requested by the Tribes, multitribal natural resource agencies, or the States, the Service or other appropriate Federal agencies will work with these parties to help determine if a harvestable surplus exists, and if so, to assist in devising reasonable and appropriate methods and levels of harvest for delisted wolves for traditional cultural purposes. We conclude that the small number of wolves that may be taken by Native Americans will not be a significant threat to the viability of the population.

## Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petitions present substantial scientific or commercial information indicating that delisting the gray wolf in Minnesota, Wisconsin, Michigan, or the western Great Lakes area as a whole may be warranted. This finding is based on information provided under all five factors.

Because we have found that the petitions present substantial information indicating that delisting the gray wolf in Minnesota, Wisconsin, Michigan, or the western Great Lakes area as a whole may be warranted, we are initiating a status review to determine whether delisting the gray wolf in those States and the surrounding region under the Act is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

## References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Midwest Regional Office (*see* **FOR FURTHER INFORMATION CONTACT**).

## Author

The primary authors of this notice are the staff members of the Midwest Regional Office (*see* **FOR FURTHER INFORMATION CONTACT**).

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 19, 2010.

**Wendi Weber,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2010–22752 Filed 9–13–10; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

September 8, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Importation of Artificially Dwarfed Plants.

*OMB Control Number:* 0579–0176.

*Summary of Collection:* Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry or movement of plants and plant pests, to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Plant Protection and Quarantine, a program within USDA's Animal and Plant Health Inspection Service (APHIS), enforce these regulations. APHIS requires artificially dwarfed plants that are imported into the United States to have been grown under certain conditions in greenhouses or screen houses within nurseries registered with the government of the country where the plants were grown.

*Need and Use of the Information:* APHIS will collect information from the phytosanitary certificate to state that the plants were: (1) Grown for at least 2 years in a nursery that is registered with the government of the country of export; (2) grown in pots containing only sterile growing media; (3) grown on benches at least 50 cm above the ground; and (4) inspected (along with the nursery itself) at least once each year by the plant protection service of the country of export. The collected information will enable PPQ to verify that the imported plants were grown under conditions that helped keep the plants free from infestation by certain longhorned beetles and other pests. APHIS also uses the information on this certificate to determine the pest condition of the shipment at the time of inspection in the foreign country. Without the information, all shipment would need to be inspected very thoroughly, thereby requiring considerably more time. This would slow the clearance of international shipments.

*Description of Respondents:* Business or other for-profit; Federal Government.

*Number of Respondents:* 30.

*Frequency of Responses:* Reporting; On occasion.

*Total Burden Hours:* 38.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2010–22795 Filed 9–13–10; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Mark Twain National Forest; Missouri; Integrated Non-Native Invasive Plant Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Mark Twain National Forest (MTNF) proposes to implement an integrated Forest-wide management strategy to control the spread of non-native invasive plants (NNIP) within the National Forest over the next 10 years, or until circumstances change to the point that the analysis is no longer valid. The proposal utilizes several management tools, including registered herbicides, bio-agents, and manual/mechanical methods.

**DATES:** Comments concerning the scope of the analysis must be received by October 4, 2010. The draft environmental impact statement is expected November 2010 and the final environmental impact statement is expected March 2011.

**ADDRESSES:** Send written comments to Integrated NNIP Project, 401 Fairgrounds Road, Rolla, MO 65401. Comments may also be sent via e-mail to *mailroom_r9_mark_twain@fs.fed.us,* or via facsimile to (573) 364–6844.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

**FOR FURTHER INFORMATION CONTACT:** Brian K Davidson, 401 Fairgrounds Road, Rolla, MO 65401.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**Purpose and Need for Action**

The purpose of this project is to protect and restore naturally-functioning native ecosystems on the MTNF by controlling current and future threats of NNIP infestations. Control means, as appropriate, eradicating, suppressing, reducing, or managing NNIP populations, preventing the spread of NNIP, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions (Executive Order 13112 invasive species). Resiliency, integrity, and sustainability of a variety of ecosystems on the MTNF could be compromised if NNIP infestations continue to spread. This proposal is needed because existing populations of NNIP currently occur on the MTNF and are degrading natural communities. Inventoried and new or unknown infestations continue to spread unchecked. Past projects to control invasive plants on the MTNF have been authorized as small portions of larger vegetation management projects. Those limited actions have not been able to keep pace with the extent in which several NNIP species spread and encroach into new areas. Species such as garlic mustard, spotted knapweed, and Sericea lespedeza are too wide-spread and aggressive to address individually or at a smaller project level in order to be successful.

**Proposed Action**

The MTNF proposes to implement an integrated program for the prevention, eradication, suppression, and reduction of existing and future NNIP infestations on the forest. The integrated approach considers the best available scientific information, most current NNIP inventories, and the effectiveness of control methods designed to meet desired treatment objectives to control NNIP infestations on National Forest System lands with the MTNF boundaries. These control methods would include various combinations of manual, mechanical, chemical, cultural, and biological treatments.

**Cooperating Agencies**

Missouri Department of Conservation (MDC) is a cooperating agency with the MTNF, the lead agency, on this proposal.

**Responsible Official**

The forest supervisor of the Mark Twian National Forest is the responsible official.

**Nature of Decision To Be Made**

The forest supervisor will make a decision on whether to implement the Integrated NNIP strategy on National Forest System land as proposed, an alternative, or no action.

**Preliminary Issues**

The interdisciplinary team has identified preliminary issues. Unintended detrimental environmental effects to non-target species could result from the application of herbicide or release of bio-agents. The application of herbicide could result in an increase of toxic chemicals in groundwater.

**Scoping Process**

Typically, this notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Scoping for this project began in November 2009 with a letter to the public and posting of information to MTNF world wide Web site. Four comment letters were received in response to that solicitation. Those comments will be incorporated into the analysis for this EIS.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Dated: August 23, 2010.

**David C. Whittekiend,**

*Forest Supervisor.*

[FR Doc. 2010–22820 Filed 9–13–10; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Fresno County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Fresno County Resource Advisory Committee will be meeting in Clovis, California, October 27, 2010. The purpose of the meeting will be to develop a timeline for receiving project proposals for the next funding cycle and review monitoring accomplishments.

**DATES:** The meeting will be held on October 27, 2010 from 6 p.m. to 8:30 p.m.

**ADDRESSES:** The meeting will be held at the Sierra National Forest Supervisor's Office, 1600 Tollhouse Road Prather, CA. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Robbin Ekman, Fresno County Resource Advisory Committee Coordinator. (559) 855–5355 ext. 3341.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Agenda items to be covered include: (1) Accept new project proposals and (2) Discuss monitoring accomplishments of current projects.

Dated: September 7, 2010.

**Ray Porter,**

*District Ranger.*

[FR Doc. 2010–22735 Filed 9–13–10; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Del Norte Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Del Norte Resource Advisory Committee (RAC) will meet in Crescent City, California. The committee meeting is authorized under the Secure Rural Schools and Community Self-Determination (SRS) Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act.

**DATES:** The meeting will be held September 27 and 28, 2010, from 6 p.m. to 8:30 p.m.

**ADDRESSES:** The meeting will be held at the Del Norte County Unified School District, Board Room, 301 West Washington Boulevard, Crescent City, California 95531.

**FOR FURTHER INFORMATION CONTACT:** Julie Ranieri, Committee Coordinator, Six Rivers National Forest, at (707) 441–3673; e-mail *jranieri@fs.fed.us*.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The public will present their Title II Project Proposals to the RAC. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: Sept. 7, 2010.

**Tyrone Kelley,**

*Forest Supervisor.*

[FR Doc. 2010–22816 Filed 9–13–10; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Tehama County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions,

(2) Approval of Minutes, (3) Public Comment, (4) Chairman's Perspective, (5) Project Presentations, (6) Project Voting, (7) Next Agenda.

**DATES:** The meeting will be held on September 21, 2010 from 9 a.m. and end at approximately 12 p.m.

**ADDRESSES:** The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Randy Jero, Committee Coordinator, 825 N. Humboldt Ave., Willows, CA 95988.

**FOR FURTHER INFORMATION CONTACT:** Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–1269; e-mail *rjero@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 16, 2010 will have the opportunity to

address the committee at those sessions.

Dated: September 7, 2010.

**Eduardo Olmedo,**

*Designated Federal Official.*

[FR Doc. 2010–22739 Filed 9–13–10; 8:45 am]

**BILLING CODE 3410–11–M**

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meeting

**DATE AND TIME:** Friday, September 17, 2010, 10 a.m.–12 p.m.

**PLACE:** Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

**SUBJECT:** Notice of Meeting of the Broadcasting Board of Governors.

**SUMMARY:** The Broadcasting Board of Governors (BBG) will be meeting at the time and location listed above. The BBG will be considering BBG Governance Committee recommendations, paying a tribute to OCB Director Pedro Roig, and discussing the BBG's research program and matters concerning the BBG's draft FY 2012 annual budget. The meeting is open—via webcast—to the public, but the portion of the meeting concerning the BBG's draft FY 2012 annual budget will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B). The open portion of the meeting is available for the public to observe via streaming on the BBG's Web site at *http://www.bbg.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

**Paul Kollmer-Dorsey,**

*Deputy General Counsel.*

[FR Doc. 2010–23004 Filed 9–10–10; 4:15 pm]

**BILLING CODE 8610–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XY93**

### Marine Mammals; File No. 15654

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that George Church, Ph.D. (Applicant), Professor of Genetics, Harvard Medical School, 77 Avenue Louis Pasteur, Boston MA 02115, has applied in due form for a permit to receive bowhead whale (*Balaena mysticetus*) cells for scientific research.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before October 14, 2010.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 15654 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9328; fax (978) 281–9394.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Laura Morse, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to receive and maintain tissues of bowhead whales to sequence the DNA (genome) and RNA (transcriptome) of the cells. Tissues would be received from a permitted laboratory (Permit No. 1008–1637–02 issued to John Wise, Ph.D.) and maintained at Harvard University for the proposed study. No live animals

would be affected by the proposed permit. The requested duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 8, 2010.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010–22897 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**[Docket No. 100721305–0436–02]**

**RIN 0660–XA18**

### Cybersecurity, Innovation and the Internet Economy

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** The Department of Commerce's Internet Policy Task Force announces that the closing deadline for submission of comments responsive to the July 28, 2010 notice of inquiry on the nexus between cybersecurity challenges in the commercial sector and innovation in the Internet economy has been extended until 5 p.m. Eastern Daylight Time (EDT) on September 20, 2010.

**DATES:** Comments are due by 5 p.m. EDT on September 20, 2010.

**ADDRESSES:** Written comments may be submitted by mail to Diane Honeycutt, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899. Submissions may be in any of the following formats: HTML, ASCII, Word, rtf, or pdf. Online submissions in electronic form may be sent to *cybertaskforce@doc.gov*. Paper submissions should include a three and one-half inch computer diskette or compact disc (CD). Diskettes or CDs should be labeled with the name and organizational affiliation of the filer and the name of the word processing program used to create the document. Comments will be posted at *http://www.ntia.doc.gov/internetpolicytaskforce* and *http://csrc.nist.gov.*

**FOR FURTHER INFORMATION CONTACT:** For general questions about this amended Notice contact: Jon Boyens, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2806, Washington, DC 20230, telephone (202) 482–0573, e-mail *Jon.Boyens@trade.gov;* or Alfred Lee, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230, telephone (202) 482–1880, e-mail *Alee@ntia.doc.gov*. Please direct media inquires to the National Institute of Standards and Technology Office of Public and Business Affairs at (301) 975–6478.

**SUPPLEMENTARY INFORMATION:** On April 21, 2010, the Department of Commerce (the "Department") announced the formation of a Commerce-wide Internet Policy Task Force ("Task Force") to identify leading public policy and operational issues impacting the U.S. private sector's ability to realize the potential for economic growth and job creation through the Internet.[1] On July 28, 2010, the Task Force issued a notice of inquiry on the nexus between cybersecurity challenges in the commercial sector and innovation in the Internet economy, with a closing date for comments of September 13, 2010.[2] The Task Force announces that the closing deadline for submission of comments responsive to the July 28, 2010 notice has been extended until 5 p.m. Eastern Daylight Time (EDT) on September 20, 2010.

Dated: September 8, 2010.

**Lawrence E. Strickling,**

*Assistant Secretary for Communications and Information.*

[FR Doc. 2010–22774 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–60–P**

[1] Commerce Secretary Locke Launches Internet Policy Task Force, Department of Commerce Press Release (April 21, 2010), at *http://www.commerce.gov/news/press-releases/2010/04/21/commerce-secretary-locke-announces-public-review-privacy-policy-and-i.*

[2] *See* 75 Fed. Reg. 44216 (July 28, 2010).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Application No. 92–9A001]**

### Export Trade Certificate of Review

**ACTION:** Notice of Application (#92–9A001) to amend an export trade certificate of review previously issued to Aerospace Industries Association of America, Inc.

**SUMMARY:** The Office of Competition and Economic Analysis, International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by e-mail at *oetca@trade.gov*.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) requires the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version should be submitted no later than 20 days after the date of this notice to: Office of

Competition and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, DC 20230, or transmitted by E-mail at *oetca@trade.gov.* Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 92–9A001."

The original Certificate for Aerospace Industries Association of America, Inc. was issued on April 10, 1992 (57 FR 13707, April 17, 1992) and last amended on July 7, 2009 (74 FR 138, 2009). A summary of the application for an amendment follows.

**Summary of the Application**

*Applicant:* Aerospace Industries Association of America, Inc. ("AIA"), 1000 Wilson Boulevard, Suite 1700, Arlington, Virginia 22209. *Contact:* Matthew F. Hall, Counsel, *Telephone:* (202) 862–9700. *Application No.:* 92-9A001. *Date Deemed Submitted:* August 31, 2010. *Proposed Amendment:* AIA seeks to amend its Certificate to:

1. Add the following companies as new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.(1)):

Acutec Precision Manufacturing, Inc., Saegertown, PA; Airdat LLC, Morrisville, NC; Alcoa Defense, Crystal City, VA; Alliant Techsystems, Inc. (ATK), Minneapolis, MN; ANSYS, Inc., Canonsburg, PA; ArmorWorks Enterprises, LLC, Chandler, AZ; Bombardier, Montreal, Canada; Broad Reach Engineering Company, Golden, CO; Celestica Corporation, Toronto, Canada; Deloitte Consulting LLP, New York, NY; Guardsmark, LLC, New York, NY; Integral Systems, Inc., Columbia, MD; Jabil Defense & Aerospace Services LLC. St. Petersburg, FL; KPMG LLP, New York, NY; M7 Aerospace L.P., San Antonio, TX; Microsemi Corporation, Irvine, CA; OSI Systems, Inc., Hawthorne, CA; Pacifica Engineering, Inc., Mukiliteo, WA; Paragon Space Development Corporation, Tucson, AZ; Plexus Corporation, Neenah, WI; PWC Aerospace & Defense Advisory Services, McLean, VA; SAP Public Services, Inc., Washington, DC; SRA International, Inc., Fairfax, VA; Tech Manufacturing, LLC, Wright City, MO; Therm, Incorporated, Ithaca, NY; TIMCO Aviation Services, Inc., Greensboro, NC; Triumph Group Inc., Wayne, PA; UFC Aerospace, Bay Shore, NY; Vermont Composites, Inc., Bennington, VT; Xerox Corporation, Norwalk, CT.

2. Make the following changes in name or address of existing Members: Accenture is now located in Chicago, IL, with controlling entity Accenture plc, Dublin, Ireland; AAR Manufacturing, Inc., Wood Dale, IL, is a Member in place of its controlling entity, AAR Corp., Wood Dale, IL; Barnes Group Inc, Bristol, CT, has replaced its subsidiary Barnes Aerospace, Windsor, CT, as the Member; Chromalloy Power Services Corporation, San Antonio, TX, has changed its name to Chromalloy (at the same location). The controlling entity remains the Carlyle Group, Washington, DC; Computer Sciences Corporation (CSC) moved from El Segundo, CA, to Falls Church, VA; Ducommon Incorporated moved from Long Beach, CA, to Carson, CA. Elbit Systems of America, LLC, Fort Worth, TX, the controlling entity of EFW Inc., Fort Worth, TX, has replaced EFW, Inc., as Member. The controlling entity of Elbit Systems of America, LLC, is Elbit Systems, Ltd., of Haifa, Israel. Electronic Data Systems Corporation, Plano, TX, has changed its name to HP Enterprise Services—Aerospace, Palo Alto, CA; General Electric Aviation, Cincinnati, OH, has replaced its controlling entity, General Electric Company, Fairfield, CT, as Member; Microsat Systems, Inc., Littleton, CO, has changed its name to Sierra Nevada Corporation, Space Systems, Littleton, CO; RTI International Materials Inc., has moved from Niles, OH, to Pittsburgh, PA; Science Applications International Corporation has moved from San Diego, CA, to McLean, VA; Sparton Corporation, Jackson, MI, has moved from San Diego, CA, to McLean, VA; Vought Aircraft Industries, Inc., Dallas, TX, has changed its name to Triumph Aerostructures—Vought Aircraft Division. The controlling entity is Triumph Group, Inc., Wayne, PA.

Dated: September 7, 2010.

**Joseph E. Flynn,**

*Director, Office of Competition and Economic Analysis.*

[FR Doc. 2010–22696 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–802]**

### Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("Department") is extending the time limit for the preliminary results of the administrative review of certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"). The review covers the period February 1, 2009, through January 31, 2010.

**DATES:** *Effective Date:* September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jerry Huang or Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4047 or (202) 482–4031, respectively.

**Background**

On April 9, 2010, the Department published in the **Federal Register** a notice of initiation of the administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp from Vietnam and the People's Republic of China. *See Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China,* 75 FR 18154 (April 9, 2010). The preliminary results of the review for certain frozen warmwater shrimp from Vietnam is currently due no later than October 31, 2010.

**Statutory Time Limits**

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act

allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

**Extension of Time Limit for Preliminary Results of Review**

We determine that it is not practicable to complete the preliminary results of this administrative review within the original time limit because the Department requires additional time to analyze questionnaire responses, issue supplemental questionnaires, conduct verification, and to evaluate surrogate value submissions.

Therefore, the Department is extending the time limit for completion of the preliminary results of the administrative review by 120 days. The preliminary results will now be due no later than February 28, 2011, the first business day following 120 days from the current deadline. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: September 8, 2010.

**Susan H. Kuhbach,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2010–22891 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–357–812]**

### Honey From Argentina: Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (the Department) is rescinding in part the administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2008, to November 30, 2009 with respect to fifteen companies. This rescission, in part, is based on the timely withdrawal of the request for review by the interested parties that requested the review. A complete list of the companies for which the administrative review is being rescinded is provided in the background section below. Additionally, the Department is extending the preliminary results of this administrative review to no later than January 7, 2011.

**DATES:** *Effective Date:* September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** David Cordell or Ericka Ukrow, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0408 and (202) 482–0405, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 1, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on, *inter alia,* honey from Argentina. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 62743 (December 1, 2009). In response and pursuant to 19 CFR 351.213(b)(2), on December 31, 2009, the Asociacion de Cooperativas Argentinas S.A. (ACA), Nexco S.A. (Nexco), and Compania Inversora Platense S.A. (CIPSA) requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2008, through November 30, 2009. Pursuant to 19 CFR 351.213(b)(1), the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners), also on December 31, 2009, requested that the Department conduct an administrative review of the antidumping duty order on honey from Argentina for the December 1, 2008, through November 30, 2009 period of review (POR) of entries of subject merchandise made by eighteen Argentine producers/exporters.

On January 29, 2010, the Department initiated a review on seventeen companies [1] for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Initiation of Administrative Review,* 75 FR 4770 (January 29, 2010) (*Initiation Notice*). On February 17, 2010, the Department informed interested parties to this administrative review of its intent to limit the number of companies to be examined. The Department encouraged all interested parties to submit comments regarding the use of U.S. Customs and Border Protection entry data for respondent selection purposes. *See* the Memorandum to the File, "United States Customs and Border Protection Entry Data for Selection of Respondents for Individual Review," dated February 17, 2010. On March 5, 2010, the Department selected the four producers/exporters with the largest export volume during the POR as mandatory respondents: HoneyMax S.A. (HoneyMax), Nexco S.A. (Nexco), Patagonik S.A. (Patagonik), and TransHoney S.A. (TransHoney). *See* the Memorandum to Richard Weible, "Administrative Review of the Antidumping Duty Order on Honey from Argentina: Respondent Selection Memorandum," dated March 5, 2010. On March 9, 2010, the Department issued its antidumping duty questionnaire to all four mandatory respondents. On March 31, 2010 and pursuant to 19 CFR 351.213(d)(1), petitioners timely withdrew their request for review of Honey Max. On April 7, 2010, petitioners and Nexco timely withdrew their requests for review for Nexco. On April 16, 2010, petitioners timely withdrew their request for review with respect to all companies except TransHoney, Patagonik, CIPSA, and ACA. Accordingly, the Department informed interested parties of its intent to rescind the review for all companies except TransHoney, Patagonik, and CIPSA, to continue with its deferral of the review with respect to ACA, and to select CIPSA as a mandatory respondent. *See* the Memorandum to the File, "2008/2009 Administrative Review of the Antidumping Duty Order on Honey from Argentina: Selection of New Mandatory Respondent," dated April 19, 2010.

On April 29, 2010, ACA timely withdrew its request for review submitted on December 31, 2009.[2]

[1] The **Federal Register** notice lists eighteen companies; however, the Department received a timely request by ACA to defer for one year the initiation of the December 1, 2008, through November 30, 2009 administrative review of its sales and entries of honey subject to the antidumping duty order on honey from Argentina in accordance with 19 CFR 351.213(c). The Department received no objections to this request from any party cited in 19 CFR 351.213(c)(1)(ii), and therefore deferred for one year the initiation of the review for such exporter in accordance with 19 CFR 351.213(c). *See Initiation Notice,* 75 FR at 4772–73.

[2] The withdrawal of the request for review was submitted by ACA based on the Department's notification in the **Federal Register** revoking the antidumping duty order with respect to honey exported by ACA effective December 1, 2008. Because the order covering honey from Argentina is revoked with respect to ACA, all entries of subject merchandise exported by ACA will be liquidated without antidumping duties. Accordingly, there will be no relevant entries that might be subject to an antidumping review. *See*

Continued

**Period of Review**

The POR is December 1, 2008, through November 30, 2009.

**Scope of the Order**

The product covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs, the Department's written description of the merchandise under this order is dispositive.

**Rescission, in Part, of Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.

Based on petitioners' and respondents' withdrawal of their requests of administrative review within the 90-day deadline, the Department is rescinding, in part, the antidumping duty administrative review on honey from Argentina for the period December 1, 2008 to November 30, 2009 with respect to the following companies: AGLH S.A., Algodonera Avellaneda S.A., Alimentos Naturales-Natural Foods, Alma Pura, Bomare S.A., Compania Apicola Argentina S.A., El Mana S.A., Interrupcion S.A., Mielar S.A., Miel Ceta SRL., Productos Afer S.A., Seabird Argentina S.A., Honey Max, Nexco, and ACA.

**Extension of Time Limit for Preliminary Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department has determined it is not practicable to complete this review within the statutory time limit because we require additional time to gather cost of production data for Patagonik's suppliers of honey and sales information from CIPSA. The time needed to analyze cost of production data and CIPSA's sales information and to develop fully the record in this administrative review makes it impracticable to complete the preliminary results of this review within the originally specified time limit. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review to the maximum of 365 days.

**Tolling of Deadlines**

In addition, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010, as explained in the memorandum from the Deputy Assistant Secretary (DAS) for Import Administration. Thus, all deadlines in this segment of the proceeding were extended by seven days. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding

"Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Therefore, the deadline for the preliminary results of this review became no later than January 7, 2011. We intend to issue the final results no later than 120 days after publication of the notice of our preliminary results of review.

**Notification to Parties**

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

**Notification Regarding Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: September 8, 2010.

**Susan H. Kuhbach,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2010–22899 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–DS–P**

*Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part,* 75 FR 23674 (May 4, 2010).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–820]**

### Certain Hot–Rolled Carbon Steel Flat Products from India: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Christopher Hargett or James Terpstra, AD/CVD Operations Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161 and (202) 482–3965, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 29, 2010, the Department published a notice of initiation of antidumping duty administrative review of certain hot–rolled carbon steel flat products from India for the period December 1, 2008, through November 30, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Initiation of Administrative Review*, 75 FR 4770

(January 29, 2010) ("*Initiation Notice*"). The current deadline for the preliminary results of this administrative review is September 9, 2010.[1]

**Statutory Time Limits**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

**Extension of Time Limit for Preliminary Results**

The Department requires additional time to review and analyze the status of entries subject to this administrative review. Thus, it is not practicable to complete this review within the originally anticipated time limit (*i.e.,* by September 9, 2010). Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results by 120 days. The preliminary results are now due no later than January 7, 2011. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: September 8, 2010.

**Susan H. Kuhbach,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2010–22877 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–DS–S**

[1] As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. The revised deadline for the preliminary results of the 2008-2009 antidumping duty administrative review is therefore September 9, 2010. The final results of this review continue to be due 120 days after the publication of the preliminary results.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XY96**

### Mid-Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (MAFMC) Scientific and Statistical Committee (SSC) will hold a public meeting.

**DATES:** The meeting will be held on Tuesday, September 21, 2010, from 9 a.m. to 5 p.m. and Wednesday, September 22, 2010, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Sheraton Four Points, 7032 Elm Road, Baltimore, MD 21240; telephone: (410) 859–3300.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** Agenda items to be discussed at the SSC meeting include: (1) new SSC member orientation; (2) review stock assessment information and specify overfishing level and acceptable biological catch for spiny dogfish for fishing years 2011–15; review and comment on proposed quota specifications and management measures for spiny dogfish for fishing years 2011–15; (3) progress report on Management Strategy Evaluation study; (4) review and comment on Council five year research plan; (5) discuss results of August 12–13, 2010 ACL Workshop and planned follow-up joint workshop with NEFSC and New England Fishery Management Council's SSC; (6) develop recommendations for stock assessment schedule; (7) set 2011 SSC schedule; (8) discuss development of Industry Advisory Panel Reports; and (9) discuss formation of SSC Ecosystem Subcommittee and development of ecosystem terms of reference for the Council.

To correct an administrative error in providing timely notice of this meeting, the Mid-Atlantic Council will conduct a webinar to allow public comment on any decisions made at this meeting and allow the SSC to ratify those decisions. Notice of the webinar will be published in the **Federal Register**.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: September 9, 2010.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–22866 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XZ02**

### North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting of the North Pacific Fishery Management Council and Alaska Board of Fisheries Joint Protocol Committee.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Joint Protocol Committee of the Alaska Board of Fisheries and Council will meet on in Anchorage, AK.

**DATES:** The meeting will be held on October 5, 2010, from 1 p.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Captain Cook Hotel, 939 West 5th Avenue, Quarterdeck (Tower 1, 10th Floor) Anchorage, AK.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Council staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The Committee will review the following: pending actions for Annual Catch Limits (ACLs) for crab and scallops; background on Council sector split action and jig fishery for Gulf (GOA) of Alaska Pacific cod fishery management; Board schedule for accepting State regulatory proposals for coordination with pending federal GOA action; ACL requirements and Fishery Management

Plan (FMP) considerations for Salmon; proposals and agenda change requests of common interest; recent federal action on salmon bycatch actions; pending action on Hagemeister Island walrus protection; pending action on closure areas to reduce GOA Tanner crab bycatch; status of the Steller Sea Lion Biological Opinion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 9, 2010.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–22865 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XY98**

### North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, October 4–12, 2010.

**DATES:** The meetings will be held Monday, October 4, 2010 through Tuesday, October 12, 2010. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Captain Cook Hotel, 939 West 5th Avenue, Anchorage, AK.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** David Witherell, Council staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The Council will begin its plenary session at 8 a.m. on Wednesday, October 6 continuing through Tuesday, October 12. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, October 4 and continue through Friday, October 8. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, October 4 and continue through Wednesday, October 6, 2010. The Enforcement Committee will meet Tuesday, October 5 from 1 p.m. to 5 p.m. All meetings are open to the public, except executive sessions.

**Council Plenary Session:**

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

*Reports:*

1. Executive Director's Report

NMFS Management Report (including review of the draft regulations to implement the Council's (1) halibut catch sharing plan and (2) Gulf of Alaska (GOA) rockfish program catch share program for consistency with Council intent when it adopted these programs in October 2008 and June 2010)

ADF&G Report (including final estimates of 2009 charter halibut catches in 2C and 3A)

NOAA Enforcement Report

U.S. Coast Guard Report

U.S. Fish & Wildlife Service Report

Protected Species Report (Report from NMFS on Steller Sea Lion (SSL) Reasonable and Prudent Alternative (RPA) measures; Council discussion of next steps)

2. Observer Program Restructuring: Receive report from Observer Committee; final action on program restructuring.

3. Bering Sea Aleutian Island (BSAI Crab Stock Assessment Fishery Evaluation (SAFE) report and Overfishing Limits (OFLs): Review and approve SAFE and annual catch specifications.

4. BSAI Crab Annual Catch Limits (ACLs)/snow crab Rebuilding Plan: Final action on amendment to establish ACLs and rebuilding plan.

5. Scallop ACLs: Final action to establish scallop ACLs.

6. GOA Tanner Crab Bycatch: Final action to close areas to minimize bycatch of Tanner crabs.

7. Arrowtooth Flounder Maximum Retainable Amounts (MRAs): Final action to revise MRAs of groundfish in BSAI arrowtooth fishery.

8. Research Priorities: Finalize 5-year research priorities.

9. BSAI Crab Issues: Initial review Pribilof Bristol Bay Red King Crab rebuilding plan; review discussion paper on Economic Data Collection, action as necessary.

10. Groundfish Specifications: Receive Plan Team report; adopt proposed catch limits.

11. Miscellaneous Issues: Review discussion paper on GOA halibut Prohibited Species Catch (PSC) (T); review regulations and forms - BSAI Chinook Salmon Bycatch Electronic Data Reporting; annual review Groundfish Workplan; preliminary screening of Habitat Areas of Particular Concern (HAPC).

12. Staff Tasking: Review Committees and tasking.

13. Other Business

The SSC agenda will include the following issues:

1. BSAI Crab ACLs/Rebuilding
2. BSAI Crab SAFE/OFLs
3. Scallop ACLs
4. BSAI Crab Issues
5. Research Priorities
6. Groundfish Specifications

The Advisory Panel will address most of the same agenda issues as the Council, except for ı1 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/* Although non-emergency issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 9, 2010.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–22864 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XY94**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team (CPSMT) and Scientific and Statistical Committee's Subcommittee on Coastal Pelagic Species (SSC Subcommittee) will hold a joint meeting that is open to the public.

**DATES:** The meeting will be held Tuesday, October 5 through Thursday, October 7. Business will begin each day at 8:30 a.m. and conclude Tuesday and Wednesday at 5 p.m. or until business for the day is completed. The meeting will conclude Thursday October 7 at 4 p.m. or when business for the day is completed.

**ADDRESSES:** The meeting will be held in the Green Room of the National Marine Fisheries Service's Southwest Fisheries Science Center; 8604 La Jolla Shores Drive, La Jolla, CA 92037.

**FOR FURTHER INFORMATION CONTACT:** Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the meeting is to review the updated Pacific sardine stock assessment for 2010. Other issues relevant to Coastal Pelagic Species fisheries management and science may be addressed as time permits.

Although non-emergency issues not contained in the meeting agenda may come before the CPSMT and SSC Subcommittee for discussion, those issues may not be the subject of formal action during this meeting. CPSMT and SSC Subcommittee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's and SSC Subcommittee's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 9, 2010.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–22813 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XS41**

### Marine Mammals; File No. 87–1851

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of permit amendment.

**SUMMARY:** Notice is hereby given that Daniel P. Costa, Ph.D., University of California at Santa Cruz, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA has been issued a major amendment to Permit No. 87–1851–02.

**ADDRESSES:** The permit amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Tammy Adams, Ph.D., (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On July 8, 2010, notice was published in the **Federal Register** (75 FR 39206) that a request for an amendment to Permit No. 87–1851–02 to conduct research on Weddell seals (*Leptonychotes weddellii*) had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 87–1851–03 authorizes the permit holder to conduct a metabolic study on eight of 40 Weddell seals authorized for capture, tagging, and sampling in the Ross Sea. Permit No. 87–1851–03 expires on January 31, 2012.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 7, 2010.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010–22895 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–580–818]**

### Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea) for the period of review (POR) January 1, 2008, through December 31, 2008. As a result of withdrawals of request for review, we are rescinding this review, in part, with respect to Dongbu Steel Co., Ltd. (Dongbu) and Pohang Iron and Steel Co., Ltd. (POSCO). For information on the net subsidy for Hyundai HYSCO Ltd. (HYSCO) the company reviewed, see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. *See* the "Public Comment" section of this notice.

**DATES:** *Effective Date:* September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration,

U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW., Washington, DC 20230; *telephone:* (202) 482–3338.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 17, 1993, the Department published in the **Federal Register** the CVD order on CORE from Korea. *See Countervailing Duty Orders and Amendments of Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea,* 58 FR 43752 (August 17, 1993). On August 3, 2009, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 74 FR 38397 (August 3, 2009).

On August 31, 2009, we received a timely request for review from Dongbu Steel Co., Ltd. (Dongbu), Hyundai HYSCO Ltd. (HYSCO), and Pohang Iron and Steel Co., Ltd. (POSCO). On September 22, 2009, the Department published a notice of initiation of the administrative review of the CVD order on CORE from Korea covering the period January 1, 2008, through December 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part* (*Initiation*), 74 FR 48224 (September 22, 2009). On October 14, 2009, and October 23, 2009, POSCO and Dongbu withdrew their requests for review, respectively.

Under 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review.

The *Initiation* was published on September 22, 2009. Dongbu and POSCO submitted timely requests for withdrawal on October 14, 2009, and October 23, 2009, respectively. No other party requested administrative reviews of Dongbu and POSCO. Therefore, we are rescinding, in part, this review of the countervailing duty order of CORE from Korea with regard to Dongbu and POSCO.

On November 2, 2009, the Department issued the initial questionnaire to HYSCO, and the Government of Korea (GOK). On December 22, 2009, the Department received questionnaire responses from HYSCO and the GOK. On February 17, 2010, and July 13, 2010, the Department issued supplemental questionnaires to GOK and HYSCO. On March 17, 2010, and August 6, 2010, the Department received supplemental questionnaire responses from the GOK and HYSCO. On April 9, 2010, the Department published in the **Federal Register** an extension of its preliminary results of the instant administrative review. *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Extension of Preliminary Results of Countervailing Duty Administrative Review,* 75 FR 18153 (April 9, 2010).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The company that continues to be subject to this review is HYSCO.

**Scope of Order**

Products covered by this order are certain corrosion-resistant carbon steel flat products from Korea. These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7210.30.0000, 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.61.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.9030, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.20.1500, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.30.15.0000, 7217.32.5000, 7217.33.5000, 7217.39.1000, 7217.39.5000, 7217.90.1000 and 7217.90.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

**Average Useful Life**

Under 19 CFR 351.524(d)(2), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned as listed in the Internal Revenue Service's (IRS) 1997 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry under examination and that the difference between the company-specific and/or country-wide AUL and the AUL from the IRS tables is significant. According to the IRS tables, the AUL of the steel industry is 15 years. No interested party challenged the 15-year AUL derived from the IRS tables. Thus, in this review, we have allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 15-year AUL.

**Subsidies Valuation Information**

*A. Benchmarks for Short-Term Financing*

For those programs requiring the application of a won-denominated, short-term interest rate benchmark, in accordance with 19 CFR 351.505(a)(2)(iv), we used as our benchmark the company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POR. This approach is in accordance with 19 CFR 351.505(a)(3)(i) and the Department's practice. *See, e.g., Corrosion–Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) (*Final Results of CORE from Korea 2006*), and accompanying Issues and Decision Memorandum (CORE from Korea 2006 Decision Memorandum) at "Benchmarks for Short-Term Financing."

*B. Benchmark for Long-Term Loans*

During the POR, HYSCO had outstanding countervailable long-term won-denominated loans from government-owned banks and Korean commercial banks. We used the following benchmarks to calculate the subsidies attributable to respondents'

countervailable long-term loans obtained through 2008:

(1) For countervailable, won-denominated long-term loans, we used, where available, the company-specific interest rates on the company's comparable commercial, won-denominated loans. If such loans were not available, we used, where available, the company-specific corporate bond rate on the company's public and private bonds, as we have determined that the GOK did not control the Korean domestic bond market after 1991. *See, e.g., Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15530, 15531 (March 31, 1999) (*Stainless Steel Investigation*) and "Analysis Memorandum on the Korean Domestic Bond Market" (March 9, 1999). The use of a corporate bond rate as a long-term benchmark interest rate is consistent with the approach the Department has taken in several prior Korean CVD proceedings. *See Id.; see also Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea* (*H Beams Investigation*), 65 FR 41051 (July 3, 2000), and accompanying Issues and Decision Memorandum at "Benchmark Interest Rates and Discount Rates;" and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (*DRAMS Investigation*), and accompanying Issues and Decision Memorandum at "Discount Rates and Benchmark for Loans." Specifically, in those cases, we determined that, absent company-specific, commercial long-term loan interest rates, the won-denominated corporate bond rate is the best indicator of the commercial long-term borrowing rates for won-denominated loans in Korea because it is widely accepted as the market rate in Korea. *See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea,* 58 FR at 37328, 37345–37346 (July 9, 1993) (*Steel Products from Korea*). Where company-specific rates were not available, we used the national average of the yields on three-year, won-denominated corporate bonds, as reported by the Bank of Korea (BOK). This approach is consistent with 19 CFR 351.505(a)(3)(ii) and our practice. *See, e.g.,* CORE from Korea 2006 Decision Memorandum at "Benchmark for Long Term Loans."

In accordance with 19 CFR 351.505(a)(2)(i), our benchmarks take into consideration the structure of the government-provided loans. For countervailable fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued.

**I. Programs Determined To Be Countervailable**

*A. Short-Term Export Financing*

Export-Import Bank of Korea (KEXIM) supplies two types of short-term loans for exporting companies, short-term trade financing and comprehensive export financing. *See* the GOK's December 22, 2009, questionnaire response (QR) at Exhibit J–1. KEXIM provides short-term loans to Korean exporters that manufacture goods under export contracts. *Id.* The loans are provided up to the amount of the bill of exchange or contracted amount, less any amount already received. *Id.* For comprehensive export financing loans, KEXIM supplies short-term loans to any small or medium-sized company, or any large company that is not included in the five largest conglomerates based on their comprehensive export performance. *Id.* To obtain the loans, companies must report their export performance periodically to KEXIM for review. *Id.* Comprehensive export financing loans cover from 50 to 90 percent of the company's export performance. *Id.*

In *Steel Products from Korea,* the Department determined that the GOK's short-term export financing program was countervailable. *See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products From Korea,* 58 FR 37338, 37350 (July 9, 1993) (*Steel Products from Korea*); *see also Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea,* 67 FR 62102, (October 3, 2002) (*Cold-Rolled Investigation*), and accompanying Issues and Decision Memorandum (Cold-Rolled Decision Memorandum) at "Short-Term Export Financing" section. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we continue to find this program countervailable. Specifically, we determine that the export financing constitutes a financial contribution in the form of a loan within the meaning of section 771(5)(D)(i) of the Act and confers a benefit within the meaning of section 771(5)(E)(ii) of the Act to the extent that the amount of interest the respondents paid for export financing under this program was less than the amount of interest that would have been paid on a comparable short-term commercial loan. *See* discussion above in the "Subsidies Valuation Information" section with respect to short-term loan benchmark interest rates. In addition, we preliminarily determine that the program is specific, pursuant to section 771(5A)(A) of the Act, because receipt of the financing is contingent upon exporting. HYSCO reported using short-term export financing during the POR.

Pursuant to 19 CFR 351.505(a)(1), to calculate the benefit under this program, we compared the amount of interest paid under the program to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Subsidies Valuation Information" section. To calculate the net subsidy rate, we divided the benefit by the free on board (f.o.b.) value of the respective company's total exports. On this basis, we determine the net subsidy rate to be 0.03 percent ad valorem for HYSCO.

*B. Reduction in Taxes for Operation in Regional and National Industrial Complexes*

Under Article 46 of the Industrial Cluster Development and Factory Establishment Act (Industrial Cluster Act), a state or local government may provide tax exemptions as prescribed by the Restriction of Special Taxation Act. In accordance with this authority, Article 276 of the Local Tax Act provides that an entity that acquires real estate in a designated industrial complex for the purpose of constructing new buildings or enlarging existing facilities is exempt from the acquisition and registration tax. In addition, the entity is exempt from 50 percent of the property tax on the real estate (*i.e.,* the land, buildings, or facilities constructed or expanded) for five years from the date the tax liability becomes effective. The exemption is increased to 100 percent of the relevant land, buildings, or facilities that are located in an industrial complex outside of the Seoul metropolitan area. The GOK established the tax exemption program under Article 276 in December 1994, to provide incentives for companies to relocate from populated areas in the Seoul metropolitan region to industrial sites in less populated parts of the country. The program is administered by the local tax officials of the county where the industrial complex is located.

During the POR, pursuant to Article 276 of the Local Tax Act, HYSCO received exemptions from the

acquisition tax, registration tax, and property tax based on the location of its manufacturing facilities, Suncheon Works, in the Yulchon Industrial Complex, a government-sponsored industrial complex designated under the Industrial Cluster Act. In addition, HYSCO received an exemption from the local education tax during the POR. The local education tax is levied at 20 percent of the property tax. The property tax exemption, therefore, results in an exemption of the local education tax.

In the *CFS Paper Investigation,* the Department determined that the tax exemptions under Article 276 of the Local Tax Act are countervailable subsidies. *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination,* 72 FR 60639 (October 25, 2007) (*CFS Paper Investigation*), and accompanying Issues and Decision Memorandum at "Reduction in Taxes for Operation in Regional and National Industrial Complexes" (CFS Paper Decision Memorandum). No new information or evidence of changed circumstances from HYSCO or the GOK was presented in this review to warrant a reconsideration of the countervailability of this program. We, therefore, continue to find this program countervailable. Specifically, we preliminarily find that the tax exemptions that HYSCO received constitute a financial contribution and confer a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. We further preliminarily find that the tax exemptions are regionally specific under section 771(5A)(D)(iv) of the Act because the exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

To calculate the benefit, we divided HYSCO's total tax exemptions by the company's total f.o.b. sales value for 2008. On this basis, we preliminarily determine the net subsidy rate to be less than 0.005 percent *ad valorem,* which consistent with the Department's practice, does not confer a measurable benefit and is not included in the calculation of the net countervailable rate. *See, e.g.,* CORE from Korea 2006 Decision Memorandum at "GOK's Direction of Credit" section.

*C. GOK's Direction of Credit for Loans Issued Prior to 2002*

In the *Final Results of CORE from Korea 2006,* the Department determined the GOK ended its practice of directing credit to the steel industry as of 2002. *See Preliminary Results of CORE from Korea 2006,* 73 FR 52315; 52317 (September 9, 2008) unchanged in *Final Results of CORE from Korea 2006,* 74 FR 2512 (January 15, 2009), and Issues and Decision Memorandum for the Countervailing Duty Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea at "Programs Determined To Confer Subsidies, A. The GOK's Direction of Credit" section. However, during 2008, the respondent had an outstanding loan that was provided prior to 2002.

In accordance with 19 CFR 351.505(c)(2) and (4), we calculated the benefit for the loan received prior to 2002 as the difference between the actual amount of interest paid on the directed loan during the POR and the amount of interest that would have been paid during the POR at the benchmark interest rate. We conducted our benefit calculations using the benchmark interest rates described in the "Subsidies Valuation Information" section above.

To calculate the net subsidy rate, we divided the company's total benefit by its respective total f.o.b. sales values during the POR, as this program is not tied to exports or a particular product. For HYSCO, we preliminarily determine the net subsidy rate under the direction of credit program to be less than 0.005 percent *ad valorem,* which consistent with the Department's practice, does not confer a measurable benefit and is not included in the calculation of the net countervailable rate. *See, e.g.,* CORE from Korea 2006 Decision Memorandum at "GOK's Direction of Credit" section.

*D. R&D Grants Under the Act on the Promotion of the Development of Alternative Energy*

The GOK's Development of Alternative Energy program is designed to contribute to the preservation of the environment, the sound and sustainable development of the national economy, and the promotion of national welfare by diversifying energy resources through promoting technological development, the use and diffusion of alternative energy, and reducing the discharge of gases harmful to humans or the environment by activating the alternative energy industry. *See* GOK's December 22, 2009, QR at Exhibit G–1. The program is administered by the Ministry of Knowledge Economy (MKE), Korea Energy Management Corporation (KEMCO), and Alternative Energy Development Center under KEMCO. *Id.*

Under the Act on the Promotion of the Development and Use of Alternative Energy, the GOK provides research and development (R&D) grants to support the following: (1) Survey of resources for alternative energy and demand for its technology, and compilation of statistics, (2) research and development of alternative energy, (3) collection, analysis, and provision of technological information on alternative energy, (4) guidance, education and publicity of technologies related to alternative energy, (5) use and diffusion of alternative energy, and model projects, (6) international cooperation related to alternative energy, (7) other projects necessary for the technological development and use or diffusion of alternative energy. *Id.,* at 2.

Pursuant to Articles 4 and 5 of the Act on the Promotion of the Development and Use of Alternative Energy, MKE prepares a base plan and a yearly execution plan for the development of alternative energy. *Id.,* at 3. The base and execution plan are announced to the public. *Id.* According to the GOK, any person who wishes to participate in the program prepares an R&D business plan and then submits the application to the Alternative Energy Development Center under KEMCO, which then evaluates the application and selects the projects eligible for government-support. *Id.* After the selected application is finally approved by MKE, KEMCO and the general supervising institute of the consortium enter into an R&D agreement and then MKE provides the grant through KEMCO. *Id.*

The costs of the R&D projects under this program are shared by the company (or research institution) and the GOK. *Id.,* at 2. Specifically, the grant ratio for project costs are as follows: (1) For large companies the GOK provides grants up to one-half of the project costs, (2) for small/medium-sized companies the GOK provides grants up to three-fourth of the project costs, (3) for consortium [1] the GOK provides grants up to three-fourth of the project costs, and (4) others the GOK provides grants up to one-half of the project costs. *Id.*

When the project is evaluated as "successful" upon completion, the participating companies must repay 40 percent of the R&D grant to the GOK. *Id.,* at 2. However, when the project is evaluated as "not successful", the company does not have to repay any of the grant amount to the GOK. *Id.*

During the POR, HYSCO received an energy-related grant under the Act on the Promotion of the Development of Alternative Energy (Alternative Energy Act) for a R&D project in which the company participated with other firms. *See* GOK's December 22, 2009 QR at 18. HYSCO reported that R&D grants under

[1] If the ratio of small to medium-sized companies in a consortium is above two-thirds, the GOK provides grants up to one-half of the project costs.

the Alternative Energy Act are provided with respect to specific projects, which are generally multi-year projects where the amount of funds to be provided by the GOK is set out in the project contract. *See* HYSCO's March 17, 2010 QR at Exhibit G–10. The cost of R&D projects under this program is shared by the participating companies and the GOK. *Id.* HYSCO's grant is related to new technologies that are applicable to both inputs of subject merchandise as well as subject merchandise. *See* Memorandum to the File titled "HYSCO's R&D Grants under the Act on the Promotion of the Development and Use of Alternative Energy" (September 7, 2010) (*HYSCO Alternative Energy Grant Memorandum*), of which a public version is on file in the CRU.

In the previous administrative review of this case, we examined this R&D grant and found that the subsidy rate under this program was less than 0.005 percent *ad valorem,* which, consistent with the Department's practice, did not confer a measurable benefit. *See Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review* (*Preliminary Results of CORE From Korea 2007*), 74 FR 46100; 46106 (September 8, 2009) unchanged in *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review* (*Final Results of CORE From Korea 2007*), 74 FR 55192 (October 27, 2009). Consequently, it was unnecessary for the Department to make a finding as to the countervailability of the program in that review. *Id.*

In this administrative review, we calculated the GOK's contribution to the project that was apportioned to HYSCO and then, in accordance with 19 CFR 351.524(b)(2), determined whether to allocate the non-recurring benefit from the grant over HYSCO's total sales in the year the grant was approved. Because the amount of the grant is less that 0.5 percent of the relevant sales, we expensed the benefit for the grant to the year of receipt. We preliminarily determine the subsidy rate under this program to be greater than 0.005 percent *ad valorem,* which, consistent with the Department's practice is a measurable benefit. Consequently, it is necessary for the Department to make a finding as to the countervailability of this program.

Therefore, in these preliminary results, we have analyzed whether the grant received from the GOK under the Alternative Energy Act is countervailable. We analyzed whether the GOK provided grants to the respondent and/or Korean industries in a manner that was specific within the meaning of section 771(5A) of the Act. We preliminarily determine the Alternative Energy Act is *de jure* specific within the meaning of 771(5A)(D)(i) because the GOK expressly limits access to the subsidy to the development and promotion of alternative energy. *See* GOK's December 22, 2009 QR at Exhibit G–2 and G–4. We also preliminarily determine that a financial contribution provided in the form of revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act.

To determine the benefit from the grant HYSCO received from this program, we calculated the GOK's contribution for the R&D grant that was apportioned to HYSCO. *See* 19 CFR 351.504(a). Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grants over a 15-year AUL by dividing the GOK approved grant amount by the company's total sales in the year of approval. Because the approved amount was less than 0.5 percent of the company's total sales, we expensed the grant to the year of receipt. Next, to calculate the net subsidy rate, we divided the portion of the benefit allocated to the POR by HYSCO's total f.o.b. sales for 2008. *See* 19 CFR 351.525(b)(3). On this basis, we preliminarily determine the net subsidy rate under this program to be 0.01 percent *ad valorem* for HYSCO.

*E. R&D Grants Under the Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials*

Under the Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials (Promotion of Specialized Enterprises Act), the GOK shares the costs of R&D projects with companies or research institutions the goal of the program is to support technology development for core parts and materials necessary for technological innovation and improvement in competitiveness. *See* GOK's December 22, 2009 QR at Exhibit G–5. The program is administered by the Ministry of Knowledge Economy (MKE) and Korea Evaluation Institute of Industrial Technology (KEIT). *Id.*

In accordance with Articles 3 and 4 of the Promotion of Specialized Enterprises Act, MKE prepares a base plan and a yearly execution plan for the development of the parts and materials industry. *See* GOK's December 22, 2009 QR at Exhibit G–5. Under the execution plan, MKE announces to the public a detailed business plan for the development of parts and materials technology. *Id.* at 2. This business plan includes support areas, qualifications, and the application process. *Id.* According to the GOK, any person or company can participate in the program by preparing an R&D business plan that conforms with the requirements set forth in the MKE business plan. *Id.* at 3. The completed application must then be submitted to KEIT, which evaluates the application and selects the projects eligible for government-support. *Id.* After the selected application is finally approved by MKE, MKE and the participating companies enter into an R&D agreement and then MKE provides the grant. *Id.*

R&D project costs are shared by the GOK and companies or research institutions as follows: (1) When the group of companies involved in the research is made up of a ratio above two-thirds small to medium-sized companies, the GOK provides a grant up to three-forth of the project cost; (2) When the group of companies involved in the research is made up of a ratio below two-thirds small to medium-sized companies, the GOK provides a grant up to one-half of the project cost. *See* GOK's December 22, 2009 QR, Exhibit G–5 at 2.

Upon completion of the project, if the GOK evaluates the project as "successful", the participating companies must repay 40 percent of the R&D grant to the GOK over five years. *See* GOK's December 22, 2009 QR, Exhibit G–5 at 2. However, if the project is evaluated by the GOK as "not successful", the company does not have to repay any of the grant amount to the GOK. *Id.*

HYSCO reported that during the POR, it was involved in two R&D projects under this program. *See* HYSCO's December 22, 2009 QR at 18. HYSCO further reported that it led a consortia of several companies in these projects for the steel used in automobiles. *Id.* Moreover, HYSCO stated that it received R&D grants under this program that are for the development of specialized technologies associated with the production of subject merchandise. *Id.*

Therefore, in these preliminary results, we have analyzed whether the grants received from the GOK under the Promotion of Specialized Enterprises Act is countervailable. We analyzed whether the GOK provided grants to the respondent and/or Korean industries in a manner that was specific within the meaning of section 771(5A) of the Act. Because we do not have a full translation of the Promotion of Specialized Enterprises Act on the record, we do not have the information necessary to determine whether it is

*de jure* specific. Subsequent to these preliminary results, we will request a full translation of the law from the GOK so that we can make a *de jure* specificity determination for the final results.

Where the Department cannot find *de jure* specificity, section 771(5A)(D)(iii) of the Act also directs the Department to examine whether the benefits provided under the program are *de facto* specific—that is, whether the benefits are specific as a matter of fact. Subparagraphs (I) through (IV) of section 771(5A)(D)(iii) of the Act stipulate that a program is *de facto* specific if one or more of the following factors exist:

(I) The actual recipients of the subsidy whether considered on an enterprise or industry basis are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In response to the Department's request, the GOK provided the Department with a breakdown of the R&D grants approved under the Promotion of Specialized Enterprises Act by the GOK, for HYSCO and by industry, for the years 2002 through 2008, which corresponds to the years the R&D projects in question were approved and the three previous years. *See* GOK's August 6, 2010 QR at Exhibit G–15 and Exhibit G–16. In conducting our *de facto* specificity analysis, we identified the GOK assistance approved for HYSCO's R&D projects under this program for which it received grants during the POR. We then analyzed the distribution of all GOK grants received under this program in the years in which HYSCO's R&D project was approved and the three previous years.[2] Specifically, we compared the amount of assistance approved for HYSCO to the average amount of assistance approved for other companies. *See* Memorandum to the file titled: "*De Facto* Specificity Analysis for Preliminary Results: The Act on special Measures for the Promotion of Specialized Enterprises for Parts and Materials 2002–2008" (*Specialized Enterprises Act Specificity Memorandum*) of which a public version is on file in CRU. Based on our analysis of the GOK's R&D grants under the Specialized Enterprises Act, we preliminarily determined that HYSCO received a disproportionate share of assistance under this program in 2005 and 2008 because the amounts it received were significantly larger than the average amount disbursed to other companies in those years. *See Specialized Enterprises Act Specificity Memorandum.* Therefore, consistent with our past practice, we preliminarily find that the program, with respect to the assistance provided to HYSCO, is *de facto* specific within the meaning of 771(5A)(D)(iii)(III) of the Act because the respondent received a disproportionate amount of the benefits under the program. *See, e.g., Alloy Magnesium From Canada: Final Results of Countervailing Duty New Shipper Review,* 68 FR 22359 (April 28, 2003), and accompanying issues and decision memorandum at Comment 2, in which the Department found a program to be *de facto* specific based, in part, on the fact that the amount of benefits received by the respondent was, "* * * greater than the grants received by 99 percent of all the beneficiaries and over ninety times larger than the typical grant amount." We also preliminarily determine that a financial contribution is provided in the form of revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act.

To determine the benefit from the grants HYSCO received from the Specialized Enterprises Act program, we calculated the GOK's contribution for the R&D grant that was apportioned to HYSCO. *See* 19 CFR 351.504(a). Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grants over a 15-year AUL by dividing the GOK approved grant amount by the company's total sales in the year of approval. Because the approved amount was less than 0.5 percent of the company's total sales, we expensed the grant to the year of receipt. Next, to calculate the net subsidy rate, we divided the portion of the benefit allocated to the POR by HYSCO's total f.o.b. sales for 2008. *See* 19 CFR 351.525(b)(3). On this basis, we preliminarily determine the net subsidy rate under this program to be 0.03 percent *ad valorem* for HYSCO.

## II. Programs Preliminarily Determined Not To Confer a Benefit During the POR

*A. Research and Development Grants Under the Industrial Development Act (IDA)*

The GOK, through the Ministry of Knowledge Economy (MKE),[3] provides R&D grants to support numerous projects pursuant to the IDA, including technology for core materials, components, engineering systems, and resource technology. *See Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review Preliminary Results of CORE From Korea 2007*), 74 FR 46100; 46102 (September 8, 2009) unchanged in *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review* (*Final Results of CORE from Korea 2007*), 74 FR 55192 (October 27, 2009). The IDA is designed to foster the development of efficient technology for industrial development. *Id.* To participate in this program a company may: (1) Perform its own R&D project, (2) participate through the Korea Association of New Iron and Steel Technology (KANIST),[4] which is an association of steel companies established for the development of new iron and steel technology, and/or (3) participate in another company's R&D project and share R&D costs as well as funds received from the GOK. *Id.* To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth under the Notice of Industrial Basic Technology Development Plan. *Id.* If the R&D project is not successful, the company must repay the full amount of the grants provided by the GOK. *Id.*

In the *H Beams Investigation,* the Department determined that through KANIST, the Korean steel industry receives funding specific to the steel industry. Therefore, given the nature of KANIST, the Department found projects under KANIST to be specific. *See Preliminary Negative Countervailing Duty Determination With Final Antidumping Duty Determination: Structural Steel Beams From the Republic of Korea,* 64 FR 69731, 69740 (December 14, 1999) (unchanged in the final results, 65 FR 69371 (July 3, 2000), and accompanying Issues and Decision Memorandum at "R&D Grants Under the

[2] The GOK only provided information by industry concerning the year in which HYSCO's R&D projects were approved, 2005 and 2008, and the preceding three years.

[3] Prior to February 29, 2008, MKE was known as the Ministry of Commerce, Industry, and Energy (MOCIE).

[4] Also known as Korea New Iron & Steel Technology Research Association (KNISTRA).

Korea New Iron & Steel Technology Research Association (KNISTRA)"). Further, we found that the grants constitute a financial contribution under section 771(5)(D)(i) of the Act in the form of a grant, and bestow a benefit under section 771(5)(E) of the Act in the amount of the grant. *Id.* No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we preliminarily continue to find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act and constitutes a financial contribution and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

HYSCO benefitted from this program during the POR. *See* HYSCO's December 22, 2009 QR at 17. HYSCO participated in a project indirectly through KANIST. *Id.* HYSCO claims that the project for which grants were received from the government was not related to subject merchandise. *Id.* at 18.

The Department has previously determined that the grants HYSCO received under this program are attributed to the production of non-subject. *See Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review* (*Preliminary Results of CORE from Korea 2007*), 74 FR 46100; 46102 (September 8, 2010) unchanged in *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review* (*Final Results of CORE From Korea 2007*), 74 FR 55192 (October 27, 2008); and Memorandum to the File titled "HYSCO's R&D Grants Under the IDA Memorandum to the file in the Countervailing Duty Administrative Review for the period of review (POR) January 1, 2007 through December 31, 2007" (July 26, 2010) (HYSCO IDA Grants Memorandum), of which a public version is on file in the CRU. Therefore, consistent with 19 CFR 351.525(b)(5)(i) and our past practice, we determine that these grants are tied to non-subject merchandise and, thus did not confer a benefit to HYSCO during the POR.

*B. Energy Savings Fund Program*

The Energy Savings Fund (ESF) program provides financing for investment in projects and equipment that use energy efficiently. In the *DRAMS Investigation,* the Department found that the loans were not specific within the meaning of section 771(5A) of the Act during the period of investigation (POI), which was January 1, 2001, through June 30, 2002. *See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea,* 68 FR 37122 (June 23, 2003) (*DRAMS Investigation*), and accompanying Issues and Decision Memorandum (DRAMS Investigation Decision Memorandum) at "ESF Program" and "Comment 24." In the instant review, HYSCO reported that, during the POR, the company had outstanding balances for ESF loans that were received in 2000. The Department's specificity finding in the *DRAMS Investigation* did not cover the year 2000. *See Preliminary Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea,* 68 FR 16766, 16775 (April 7, 2003) (unchanged in final results, 68 FR 37122 (June 23, 2003)). However, because there is no measurable benefit for this program as explained below, we preliminarily determine that it is unnecessary for the Department to make a determination on the countervailability of ESF loans that were issued in 2000.

We performed the loan benefit calculation applying the long-term benchmark interest rates described above in the "Subsidies Valuation Information" section. For the POR, we preliminarily determine the net subsidy rate under the ESF loan program to be less than 0.005 percent *ad valorem,* which, consistent with the Department's practice, does not confer a measurable benefit and is not included in the calculation of the net countervailable rate. *See, e.g.,* CORE from Korea 2006 Decision Memorandum at "GOK's Direction of Credit" section.

*C. Overseas Resource Development Program: Loan From Korea Resources Corporation (KORES)*

In *Final Results of CORE from Korea 2006,* the Department found that GOK enacted the Overseas Resource Development (ORD) Business Act in order to establish the foundation for securing the long-term supply of essential energy and major material minerals, which are mostly imported because of scarce domestic resources. *See Preliminary Results of CORE from Korea 2006,* 73 FR 52315; 52326 (September 9, 2008) unchanged in *Final Results of CORE from Korea 2006,* 74 FR 2512 (January 15, 2009), and Issues and Decision Memorandum for the Countervailing Duty Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea at "Programs Determined To Be Not Used" section. Pursuant to Article 11 of this Act, the Ministry of Commerce, Industry and Energy (MOCIE) annually announces its budget and the eligibility criteria to obtain a loan from MOCIE. *Id.* Any company that meets the eligibility criteria may apply for a loan to MOCIE. *Id.* The eligibility criteria for receiving an ORD loan are that the loan should be used for surveying, exploration, development, production, engineering services and financing for the development of overseas natural resources. *Id.* The applicant submits its ORD plans to MOCIE in accordance with the Overseas Resources Development Business Act. *Id.* MOCIE requests that the KORES, a public corporation that is wholly owned by the GOK, conduct an eligibility review, feasibility study and credit evaluation. *Id.* KORES was established in 1967 and has assumed a direct role in establishing and implementing the GOK's resources development policy, whose purpose is to secure mineral resources for Korea. *Id.* In the selection process, KORES uses a loan evaluation committee to select the recipients based on the criteria for the project to develop strategic minerals (*e.g.,* bituminous coal, uranium, iron ore, copper, zinc, nickel, etc.) including co-development with resource-owning countries, mining right of minerals, etc. KORES provides the evaluation results and its recommendation to MOCIE. *Id.* If the result and recommendation are favorable, MOCIE approves the loan application and provides funds to KORES. KORES then lends the funds to the company for foreign resource development. *Id.*

During the POR, HYSCO obtained loans from KORES for investment in a copper mine in Mexico. *See* HYSCO's December 22, 2009 QR at 11 and Exhibit 8 at 24. However, under 19 CFR 351.505(b), no benefits were received by HYSCO during the POR. Therefore, we preliminarily determine that HYSCO did not receive a benefit from this program during the POR. We will continue to examine this program in future reviews.

*D. Overseas Resource Development Program: Loan From Korea National Oil Corporation (KNOC)*

In *Final Results of CORE from Korea 2007,* the Department found that GOK enacted the Overseas Resource Development (ORD) Business Act in order to establish the foundation for securing the long-term supply of essential energy and major material minerals, which are mostly imported because of scarce domestic resources. *See Preliminary Results of CORE from Korea 2007,* 74 FR 46100; 46107–46108

(September 8, 2010) unchanged in *Final Results of CORE from Korea 2007*) 74 FR 55192 (October 27, 2008). Pursuant to Article 11 of this Act, the MKE annually announces its budget and the eligibility criteria to obtain a loan from MKE. *Id.* Any company that meets the eligibility criteria may apply for a loan to MKE. *Id.* For projects that are related to petroleum and natural gas, the KNOC lends the funds to the company for foreign resources development. *Id.* An approved company enters into a borrowing agreement with KNOC for the development of the selected resource. *Id.* Two types of loans are provided under this program: "General loans" and "success-contingent loans". For a success-contingent loan, the repayment obligation is subject to the results of the development project. In the event that the project fails, the company will be exempted for all or a portion of the loan repayment obligation. However, if the project succeeds, a portion of the project income is payable to KNOC. *Id.*

During the POR, HYSCO obtained a loan from KNOC related to the exploration for petroleum in New Zealand. *See* HYSCO's December 22, 2009 questionnaire response (QR) at 11 and Exhibit 8 at 24. However, under 19 CFR 351.505(b), no benefits were received by HYSCO during the POR. Therefore, we preliminarily determine that HYSCO did not receive a benefit from this program during the POR. We will continue to examine this program in future reviews.

## III. Programs Preliminarily Determined To Be Not Countervailable

### *A. Long-Term Loans From the Korean Development Band (KDB) Issued in Years 2002 through 2008*

HYSCO had long-term loans that were issued by the Korean Development Bank (KDB), a government policy bank, in years 2002 through 2008 on which they made interest payments during the POR. Therefore, in these preliminary results, we have analyzed whether the long-term KDB loans are countervailable. First, we analyzed whether the KDB issued long-term loans to the respondent and/or the Korean steel industry in a manner that was specific within the meaning of section 771(5A) of the Act.

The Department has previously determined that long-term loans issued by the KDB during the period 2002 through 2006 are not *de jure* specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act because: (1) They are not based on exportation; (2) they are not contingent on the use of domestic goods over imported goods; and (3) the legislation and/or regulations do not expressly limit access to the subsidy to an enterprise or industry, or groups thereof, as a matter of law. *See CFS Paper Investigation* 72 FR 60639 (October 25, 2007) and CFS Paper Decision Memorandum at "Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions" section. The Department's finding in the *CFS Paper Investigation* that long-term loans issued by the KDB during the period 2002 through 2006 are not *de jure* specific was not limited to a particular industry or industries. *Id.* Therefore, in regard to this issue, we find that the Department's determination in the *CFS Paper Investigation* is applicable to the instant review. Further, concerning this program, there is no information on the record of the instant review that warrants reconsideration of the Department's prior finding of the absence of *de jure* specificity during the 2002 through 2006 period. On this basis, we preliminarily determine that the KDB's issuance of long-term loans during the 2002 through 2007 period are not *de jure* specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act.

Where the Department finds no *de jure* specificity, section 771(5A)(D)(iii) of the Act also directs the Department to examine whether the benefits provided under the program are *de facto* specific—that is, whether the benefits are specific as a matter of fact. Subparagraphs (I) through (IV) of section 771(5A)(D)(iii) of the Act stipulate that a program is *de facto* specific if one or more of the following factors exist:

(I) The actual recipients of the subsidy whether considered on an enterprise or industry basis are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In response to the Department's request, the GOK provided the Department with a breakdown of the issuance of long-term lending by the KDB, by industry, for the years 2002 through 2008. *See* GOK's March 17, 2010, Questionnaire Response, at Exhibit A–5. In conducting our *de facto* specificity analysis, we identified all long-term loans issued by the KDB to HYSCO on which interest payments were made during the POR. We then analyzed the distribution of all long-term loans issued by the KDB across industry groups in the year in which HYSCO's outstanding loans were issued as well as the two preceding years.[5] Specifically, we compared the amount of long-term KDB loans issued to the "Base Metal Industry" (*e.g.,* the steel industry) to the amount of long-term KDB loans issued to other industries.

Based on our analysis of the long-term KDB lending data coupled with the KDB lending data reported by HYSCO in their respective questionnaire responses, we preliminarily determine that the respondent firm, as an individual enterprise, did not receive KDB loans in a manner that was *de facto* specific as described in sections 771(5A)(D)(iii) of the Act. Further, based on these comparisons, we preliminarily determine that the KDB did not issue loans to the steel industry in a manner that was *de facto* specific as described in section 771(5A)(D)(iii) of the Act. For further information, see Memorandum to the File titled "Analysis of KDB Lending Data" (September 7, 2010), which is a public document on file in the CRU.

On this basis, we preliminarily determine that the long-term loans that HYSCO received from the KDB during the years 2002 through 2008 are not specific within the meaning of section 771(5A) of the Act, and, therefore, we preliminarily determine that they are not countervailable.

## IV. Programs Preliminarily Determined To Be Not Used

### *Overseas Resource Development Program: Loan From KEXIM*

In *Final Results of CORE from Korea 2006,* the Department found that GOK enacted the Overseas Resource Development (ORD) Business Act in order to establish the foundation for securing the long-term supply of essential energy and major material minerals, which are mostly imported because of scarce domestic resources. *See Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review* (*Preliminary Results of CORE from Korea 2006*), 73 FR 52315; 52326 (September 9, 2008) unchanged in *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review* (*Final Results of*

[5] The GOK was able to provide information concerning the amount of loans the KDB issued to each industry during the period 2001 through 2007. Therefore, when analyzing whether loans issued in 2002 were specific, we were only able to analyze lending patterns during the period 2001 and 2002.

*CORE from Korea 2006*), 74 FR 2512 (January 15, 2009), and Issues and Decision Memorandum at "Programs Determined To Be Not Used" section. Pursuant to Article 11 of this Act, the MKE annually announces its budget and the eligibility criteria to obtain a loan from MKE. *Id.* Any company that meets the eligibility criteria may apply for a loan to MKE. *Id.* The eligibility criteria for receiving an ORD loan are that the loan should be used for surveying, exploration, development, production, engineering services and financing for the development of overseas natural resources. *Id.* The applicant submits its ORD plans to MKE in accordance with the ORD. *Id.* The loan evaluation committee evaluates the applications, selects the recipients and gets the approval from the minister of MKE. *Id.*

During the POR, HYSCO reported in its 2007–2008 financial statements that it obtained loans from KEXIM for investment in a copper mine in Mexico. *See* HYSCO's December 22, 2009, QR at 11 and Exhibit 8 at 24; *see also* HYSCO's Loan Agreement with KEXIM, Exhibit A–5. Copper is not an input used in the production of subject merchandise. Therefore, we preliminarily determine that HYSCO did not use this program with respect to the subject merchandise during the POR. We will continue to examine this program in future reviews.

In addition, we found that the following programs were not used during the POR:

- Reserve for Research and Manpower Development Fund Under RSTA Article 9 (TERCL Article 8)
- RSTA Article 11: Tax Credit for Investment in Equipment to Development Technology and Manpower (TERCL Article 10)
- Reserve for Export Loss Under TERCL Article 16
- Reserve for Overseas Market Development Under TERCL Article 17
- Reserve for Export Loss Under TERCL Article 22
- Exemption of Corporation Tax on Dividend Income from Overseas Resources Development Investment Under TERCL Article 24
- Tax Credits for Temporary Investments Under TERCL Article 27
- Social Indirect Capital Investment Reserve Funds Under TERCL Article 28
- Energy-Savings Facilities Investment Reserve Funds Under TERCL Article 29
- Reserve for Investment (Special Cases of Tax for Balanced Development Among Areas Under TERCL Articles 41–45)
- Tax Credits for Specific Investments Under TERCL Article 71
- Asset Revaluation Under Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL)
- Emergency Load Reduction Program
- Electricity Discounts Under the Requested Loan Adjustment Program
- Electricity Discounts Under the Emergency Load Reductions Program
- Export Industry Facility Loans and Specialty Facility Loans
- Local Tax Exemption on Land Outside of a Metropolitan Area
- Short-Term Trade Financing Under the Aggregate Credit Ceiling Loan Program Administered by the Bank of Korea
- Industrial Base Fund
- Excessive Duty Drawback
- Private Capital Inducement Act
- Scrap Reserve Fund
- Special Depreciation of Assets on Foreign Exchange Earnings
- Export Insurance Rates Provided by the Korean Export Insurance Corporation
- Loans from the National Agricultural Cooperation Federation
- Tax Incentives from Highly Advanced Technology Businesses Under the Foreign Investment and Foreign Capital Inducement Act
- Other Subsidies Related to Operations at Asan Bay: Provision of Land and Exemption of Port Fees Under the Harbor Act
- D/A Loans Issued by the Korean Development Bank and Other Government-Owned Banks
- R&D Grants under the Promotion of Industrial Technology Innovation Act
- Export Loans by Commercial Banks Under KEXIM's Trade Bill Rediscounting Program
- Restriction of Special Taxation Act (RSTA) Article 94: Equipment Investment to Promote Worker's Welfare

## Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 2008, through December 31, 2008, we preliminarily determine the net subsidy rate for HYSCO to be 0.07 percent *ad valorem,* a *de minimis* rate. *See* 19 CFR 351.106(c)(1).

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of this review. If the final results remain the same as these preliminary results, the Department will instruct CBP to liquidate without regard to countervailable duties all shipments of subject merchandise produced by HYSCO, entered, or withdrawn from warehouse, for consumption from January 1, 2008, through December 31, 2008. The Department will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise produced by HYSCO, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

## Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. *See* 19 CFR 351.309(d)(1). Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Pursuant to 19 CFR 351.305(b)(4), representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(i), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010–22901 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–888]**

### Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on floor–standing, metal–top ironing tables and certain parts thereof from the People's Republic of China (PRC). The period of review (POR) is August 1, 2008 through July 31, 2009. We have preliminarily determined that respondents Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. (Foshan Shunde) and Since Hardware (Guangzhou) Co., Ltd. (Since Hardware) have made sales to the United States of the subject merchandise at prices below normal value. We invite interested parties to comment on these preliminary results. Parties filing comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument(s).

**EFFECTIVE DATE:** September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 6, 2004, the Department published in the **Federal Register** the antidumping duty order regarding floor–standing, metal–top ironing tables and certain parts thereof (ironing tables) from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004) (*Amended Final and Order*).

On August 3, 2009, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on, inter alia, ironing tables from the People's Republic of China. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 38397 (August 3, 2009). On August 31, 2009, Home Products International (the Petitioner in this proceeding) requested, in accordance with 19 CFR 351.213(b)(1), an administrative review of this order for Foshan Shunde and Since Hardware.

On September 22, 2009, the Department initiated an administrative review of Foshan Shunde and Since Hardware. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 48224 (September 22, 2009). On February 16, 2010, the Department issued a memorandum that tolled the deadlines for all Import Administration cases by seven calendar days due to the recent Federal Government closure. *See* Memorandum for the Record from Ronald Lorentzen, DAS for Import Administration, regarding Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010.

On April 28, 2010, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), the Department extended the deadline for the preliminary results of review until September 7, 2010. *See Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the Administrative Review*, 75 FR 22372 (April 28, 2010).

The Department issued its original antidumping questionnaire to both Foshan Shunde and Since Hardware on September 29, 2009. Foshan Shunde timely filed its response to Section A of the questionnaire on November 13, 2009; Foshan Shunde's Sections C and D responses followed on November 20, 2009. Since Hardware timely filed its response to Section A of the questionnaire on October 29, 2009; Since Hardware's Sections C and D responses followed on November 19, 2009 and December 1, 2009 respectively. Petitioner filed comments on Foshan Shunde's sections A, C and D responses on November 15, 2009. Petitioner filed comments on Since Hardware's sections A, C, and D responses on December 7, 2009.

The Department subsequently issued supplementary questionnaires to Foshan Shunde and Since Hardware on February 24, 2010 and May 5, 2010. Foshan Shunde timely responded to each of these supplemental requests for information on March 8, 2010, March 25, 2010, April 9, 2010, and May 18, 2010. Since Hardware timely responded to each of the Department's supplemental requests for information on March 25, 2010, April 9, 2010, and June 3, 2010. On, April 9, 2010, Petitioner filed additional comments on the original and supplemental sections A, C, and D responses submitted by Since Hardware. On April 15, 2010, Petitioner filed additional comments on the original and supplemental sections A, C, and D responses submitted by Foshan Shunde. On August 25, 2010, Petitioner filed comments concerning the Department's verification of Since Hardware. On August 26, 2010, Petitioner filed comments concerning the Department's verification of Foshan Shunde.

#### Verification

As provided in section 782(i)(3) of the Act, we verified the information submitted by Foshan Shunde and Since Hardware upon which we have relied in these preliminary results of review. We conducted our verification of Foshan Shunde from June 14 through June 18, 2010 and our verification of Since Hardware from June 21 through June 25, 2010. The Department's verification reports are on the record of this review in the Central Records Unit, Room 1117 of the main Department building. We used standard verification procedures, including examination of relevant accounting and production records, as well as source documentation provided by the respondents. *See* "Verification of the Sales and Factors Response of Foshan Shunde (Guangzhou) Co., Ltd. in the Antidumping Review of Floor Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China (PRC)" (Foshan Shunde Verification Report) dated August 17, 2010 . *See also* "Verification of the Sales and Factors Response of Since Hardware (Guangzhou) Co. Ltd. in the Antidumping Review of Floor Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China (PRC)" dated August

16, 2010 (Since Hardware 2008–2009 Verification Report ).

**Surrogate Country and Surrogate Value Data**

On July 13, 2010, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value data. *See* the Department's Letter to All Interested Parties; Administrative Review of Floor–Standing, Metal–Top, Ironing Tables and Parts Thereof from the People's Republic of China ("PRC"): Surrogate Country List, dated July 13, 2010 (Surrogate Country List). On August 17, 2010, the Department received information to value factors of production (FOP) from Foshan Shunde, Since Hardware and the Petitioner. With the exception of the surrogate value data to value labor, all of the surrogate values placed on the record were obtained from sources in India.

**Scope of the Order**

For purposes of this order, the product covered consists of floor–standing, metal–top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full–height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor–standing, metal–top ironing tables are covered by this review.

Furthermore, this order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term "unassembled" ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term "complete" ironing table means product sold as a ready–to-use ensemble consisting of the metal–top table and a pad and cover, with or without additional features, *e.g.*, iron rest or linen rack. The term "incomplete" ironing table means product shipped or sold as a "bare board" *i.e.*, a metal–top table only, without the pad and cover with or without additional features, *e.g.*, iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this order under the term "certain parts thereof" consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor–standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (CBP) purposes, the Department's written description of the scope remains dispositive.

**Non–Market-Economy Status**

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (NME). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this administrative review has contested such treatment. Accordingly, we calculated normal value (NV) in accordance with section 773(c) of the Act, which applies to NME countries.

**Surrogate Country**

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's FOPs to the extent possible, in one or more market–economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined India, the Philippines, Indonesia, Thailand, Ukraine and Peru are countries comparable to the PRC in economic development. (*See* Memorandum to Richard Weible from Carole Showers Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Order on Floor Standing Metal–Top Ironing Tables and Certain Parts ("Ironing Tables") from the People's Republic of China dated July 8, 2010 (Surrogate Country List)).

Based on publicly available information placed on the record by interested parties (*e.g.*, production data), the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of the subject merchandise, and has publicly available and reliable data. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate country selection.

**Separate Rates**

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries, available at http://ia.ita.gov/policy/bull05–1.pdf. Exporters can demonstrate this independence through the absence of both de jure and de facto governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 at Comment 1 (May 6, 1991) (Sparklers). This concept was further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). (*Silicon Carbide*). However, if the Department

determines that a company is wholly foreign–owned or located in a market economy, then a separate rate analysis is unnecessary to determine whether it is independent from government control.

Accordingly, we have considered whether Foshan Shunde and Since Hardware are independent from government control, and therefore eligible for separate rates. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Certain Cut–to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61758 (November 19, 1997); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

Foshan Shunde and Since Hardware both provided complete separate–rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate–rates analysis to determine whether Foshan Shunde and Since Hardware are independent from government control.

**Absence of De Jure Control**

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588 at Comment 1. The evidence provided by Foshan Shunde and Since Hardware supports a preliminary finding of de jure absence of control based on the following: (1) an absence of restrictive stipulations associated with their business and export licenses; (2) applicable legislative enactments decentralizing control of companies; and (3) formal measures (*e.g., the Foreign Trade Law*) decentralizing control of companies. *See, e.g.*, Foshan Shunde November 13, 2009 Section A questionnaire response at pages at A–4–A–5; *see also* Since Hardware October 29, 2009 questionnaire response at pages A–3–A–5.

**Absence of De Facto Control**

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* 59 FR 22857; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic Of China*, 60 FR 22544 (May 8, 1995) The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates. .

The evidence provided by Foshan Shunde and Since Hardware support a preliminary finding of *de facto* absence of government control based on the following: (1) the absence of evidence that the export prices are set by or are subject to the approval of a government agency; (2) the respondents have authority to negotiate and sign contracts and other agreements; (3) the respondents have autonomy from government in making decisions regarding the selection of management; and (4) the respondents retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses. *See* Foshan Shunde November 13, 2010 Section A questionnaire response at A–7 through- A–9; *see also* Since Hardware October 29, 2010 Section A questionnaire response at A–5 through A–8.

In accordance with the criteria identified in Sparklers and Silicon Carbide, the evidence placed on the record of this review by Foshan Shunde and Since Hardware demonstrates an absence of and *de facto* government control with respect to Foshan Shunde's and Since Hardware's exports of the subject merchandise. Accordingly, we have determined that Foshan Shunde and Since Hardware have demonstrated eligibility for separate rates.

**Fair Value Comparisons**

To determine whether the respondents' sales of the subject merchandise to the United States were made at prices below normal value (NV), we compared its United States prices to normal values, as described in the "U.S. Price" and "Normal Value" sections of this notice. *See* section 773(a) of the Act.

*U.S. Price*

**Export Price**

We based U.S. price for Foshan Shunde and Since Hardware on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. We deducted foreign inland freight, and foreign brokerage and handling expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act. Where appropriate, we made an addition to U.S. price for billing adjustments.

Both Since Hardware and Forever Holdings incurred foreign inland freight and foreign brokerage and handling expenses from PRC service providers. We therefore valued these services using Indian surrogate values (*see* "Factors of Production" section below for further discussion).

*Normal Value*

**Factors of Production (FOPs)**

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government control on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's

questionnaires required Foshan Shunde and Since Hardware to provide information regarding the weighted–average FOP.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publically available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market–economy currency, the Department may value the factor using the actual price paid for the input. See 19 CFR 351.408(c)(1); see also Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States, 268 F. 3rd 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market–based prices to value FOPs). During the POR, Foshan Shunde reported that it purchased a certain production material from a market economy supplier. See Foshan Shunde November 20, 2009 Section D response at exhibit D–2. Because Foshan Shunde purchased more than 33 percent of its total volume of this particular input from a market economy supplier, we used the market economy price paid for that material to value this input. See Foshan Shunde November 20, 2009 questionnaire response at exhibit D–2.) During the POR, Since Hardware made no purchases from market economy suppliers. See Since Hardware December 1, 2009 at Appendix D–6.

We calculated NV based on FOPs in accordance with section 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include but are not limited to: (1) hours of labor required; (2) quantities of raw material employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by Foshan Shunde and Since Hardware for materials, energy, labor, by–products, and packing. To calculate NV, we multiplied the reported unit factor quantities by publicly available values in the surrogate country, India.

Foshan Shunde and Since Hardware both reported by–product sales. Consistent with the Department's determination in the investigation of Diamond Sawblades from the PRC, we will deduct the surrogate value of by–products sold from normal value because the surrogate financial statements on the record of this administrative review contain no references to the treatment of by–products and because Since Hardware and Foshan Shunde provided evidence to demonstrate sales of their by–products. *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (Diamond Sawblades from the PRC), and accompanying Issues and Decision Memorandum at Comment 9, unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 35864 (June 22, 2006). This is consistent with accounting principles based on a reasonable assumption that if a company sells a by–product, the by–product necessarily incurs expenses for overhead, SG&A, and profit. *Id.*

In selecting the surrogate Indian values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. *See, e.g., Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and accompanying Issues and Decision Memorandum at Comment 2*. The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory of production. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *Sigma Corp. v. United States*, 117 F. 3rd 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used to value Foshan Shunde's and Since Hardware's FOPs may be found in the September 7, 2010 Memorandum to the File through Robert James, Program Manager Office 7 from Michael J. Heaney International Trade Analyst: Antidumping Duty Administrative Review of Floor–Standing, Metal Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, dated September 7, 2010 (Factors Valuation Memorandum.)

The Department calculated SVs for the majority of reported FOPs purchased from NME sources using the contemporaneous, weighted average unit import value derived from the Ministry of Commerce of India (Indian Import Statistics) for the POR. The Department used Indian import data from the Global Trade Atlas (GTA) published by Global Trade Information Services, Inc. (GTIS) which is sourced from the Directorate General of Commercial Intelligence & Statistics, Indian Ministry of Commerce, to determine the surrogate values for most raw materials, by–products and packing material inputs. The Department has disregarded statistics from NMEs, countries with generally available export subsidies, and undetermined countries, in calculating average value. In accordance with the Omnibus Trade and Competiveness Act of 1988, Conf. Report to Accompany HR. 3, HR Rep. No., 100th Cong,. 2nd Session (1988), the Department continues to apply its long–standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized. In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non–industry specific export subsidies. *See, e.g. Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decisions Memorandum at pages 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut–to Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decisions Memorandum at page 4; *Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at page 23. For a detailed description of all surrogate values used for Foshan Shunde and Since Hardware, see the Factors Valuation Memorandum.

In past cases, it has been the Department's practice to value various FOPs using import statistics of the primary selected surrogate country from the World Trade Atlas (WTA), as published by GTIS. *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 50946, 50950 (October 2, 2009). However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. dollar. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian rupee to the U.S. dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian rupees, the WTA software is limited with regard to the number of significant digits it can

manage. Therefore, GTIS made a decision to change the official reporting currency for Indian data from the Indian rupee to the U.S. dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian rupee to the U.S. dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted. *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value , Affirmative Final determination of Critical Circumstances, and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

However, the data reported in the GTA software report import statistics, such as data from India, in the original reporting currency and thus these data correspond to the original currency value reported by each country. Additionally, the data reported in GTA software are reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing FOPs because the GTA import statistics are in the original reporting currency of the country from which the data are obtained and have the same level of accuracy as the original data released.

The Department valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008. These electricity rates represent actual, country–wide, publically–available information on tax–exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided. *See* Factors Valuation Memorandum at page 7.

The Department valued water using data from the Maharashtra Industrial Development Corporation (MDIC) as it includes a wide range of industrial water tariffs. To value water, we used the average rate for industrial use from MDIC water rates at http://www.midcindia.org. See Factors Valuation Memorandum at page 8.

We valued diesel fuel using the rates provided by the OECD's International Energy Agency's publication: *Key World Energy Statistics*. The prices are based on July 2007 prices in India for diesel. *See* Factor Valuation Memorandum at page 7.

For direct, indirect, and packing labor, pursuant to a recent decision by the Federal Circuit, we have calculated an hourly wage rate to use in valuing Foshan Shunde's and Since Hardware's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise. *See Dorbest Ltd. v. United States*, 2009–1257 at 20 (Fed. Cir. 2010). Because this wage rate does not separate labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by either Foshan Shunde or Since Hardware. *See* Factors Valuation Memorandum at page 7.

Since Hardware claimed that it utilized hot rolled steel as a production input of the subject merchandise. However, Since Hardware's supporting documentation provided to Department officials at verification did not demonstrate Since Hardware purchased hot–rolled steel in sizes of less than 1.1 millimeters. *See* Since Hardware 2008–2009 Verification Report at pages 21–23. We, therefore, assigned the surrogate value of cold–rolled steel to value this production input.

The Department valued truck freight expenses using a per–unit average rate calculated from data on the Infobanc Web site: http://www.infobanccom/logistics/logtruck.htm. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POR, the Department deflated the rate using the Wholesale Price Index of India. *See* Factors Valuation Memorandum at page 9.

The Department valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India*, by the World Bank.

To value factory overhead, selling, general and administrative (SG&A) expenses, and profit the Department used the audited 2005–2006 financial statements of Infiniti Modules Pvt. Ltd. (Infiniti Modules).

We are preliminarily granting a by–product offset to both Foshan Shunde and Since Hardware for scrap steel sales. *See* Factors Valuation Memorandum at pages 3–4.

**Currency Conversion**

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773(A) of the Act, based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Board.

**Preliminary Results of Review**

We preliminarily determine that the following antidumping duty margins exist:

| Exporter | Margin (percent) |
|---|---|
| Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. | 8.49 |
| Since Hardware ..... | 56.49 |

**Assessment Rates**

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. For assessment purposes, where possible, we calculated importer–specific *ad valorem* assessment rates for ironing tables from the PRC based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.*, less than 0.5

percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 157.68 percent (*see Amended Final and Order*); and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Public Comment**

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will be held 37 days after the publication of this notice, or the first workday thereafter unless the Department alters the date pursuant to 19 CFR 351.310(d). Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments and a table of authorities cited in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief in accordance with 19 CFR 351.310(c). Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and this notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010–22893 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–888]**

### Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China (PRC). The period of review (POR) is August 1, 2007 through July 31, 2008. We have preliminarily determined that respondent Since Hardware (Guangzhou) Co., Ltd. (Since Hardware) has made sales to the United States of the subject merchandise at prices below normal value. We invite interested parties to comment on these preliminary results. Parties filing comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument(s).

**DATES:** *Effective Date:* September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 6, 2004, the Department published in the **Federal Register** the antidumping duty order regarding floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China,* 69 FR 47868 (August 6, 2004) (*Amended Final and Order*).

On August 1, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on, inter alia, ironing tables from the People's Republic of China. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 73 FR 44966 (August 1, 2008). On August 29, 2008, Home Products International (the Petitioner in this proceeding) requested, in accordance with 19 CFR 351.213(b)(1), an administrative review of this order for Since Hardware. Since Hardware's request for an administrative review of its sales pursuant to 19 CFR 351.213(b)(2) followed on September 2, 2008. (The deadline for filing a request for review, August 31, 2008, fell on a weekend; Since Hardware's request was timely filed on the first business day thereafter.) In its request for review, Since Hardware also requested that the Department defer initiation of the administrative review for one year, pursuant to 19 CFR 351.213(c).

On October 29, 2008, the Department published its notice of deferral of the administrative review for one year with respect to Since Hardware, pursuant to

19 CFR 351.213(c). (This notice of deferral was inadvertently omitted from our September 30th notice of initiation). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review,* 73 FR 64305 (October 29, 2008)

In accordance with the deferral of administrative review, on September 22, 2009, the Department initiated an administrative review of Since Hardware for the period of review of August 1, 2007 through July 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 48224 (September 22, 2009). On February 16, 2010, the Department issued a memorandum that tolled the deadlines for all Import Administration cases by seven calendar days due to the recent Federal Government closure. *See* Memorandum for the Record from Ronald Lorentzen, DAS for Import Administration, regarding Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010.

On April 28, 2010, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), the Department extended the deadline for the preliminary results of review until September 7, 2010. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the Administrative Review,* 75 FR 22371 (April 28, 2010).

The Department issued its original antidumping questionnaire to Since Hardware on September 29, 2009. Since Hardware timely filed its response to Section A of the questionnaire on October 29, 2009; Since Hardware's Sections C and D responses followed on November 19, 2009 and December 1, 2009 respectively. Petitioner filed comments on Since Hardware's sections A, C, and D responses on December 7, 2009.

The Department subsequently issued supplemental questionnaires to Since Hardware on February 24, 2010, and May 5, 2010. Since Hardware timely responded to each of the Department's supplemental requests for information on March 25, 2010, April 9, 2010 and June 3, 2010. On April 9, 2010, Petitioner filed additional comments on the original and supplemental sections A, C, and D responses submitted by Since Hardware. On August 26, 2010, Petitioner filed comments concerning the Department's verification of Since Hardware.

**Verification**

As provided in section 782(i)(3) of the Act, we verified the information submitted by Since Hardware upon which we have relied in these preliminary results of review. We conducted our verification from June 21, through June 25, 2010. The Department's verification report is on the record of this review in the Central Records Unit, Room 1117 of the main Department building. We used standard verification procedures, including examination of relevant accounting and production records, as well as source documentation provided by Since Hardware. *See* August 23, 2010 Verification of the Sales and Factors Response of Since Hardware (Guangzhou) Co. Ltd. in the Antidumping Review of Floor Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China (PRC) (Since Hardware 2007–2008 Verification Report).

**Surrogate Country and Surrogate Value Data**

On July 13, 2010, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value data. *See* the Department's Letter to All Interested Parties; Administrative Review of Floor-Standing, Metal-Top, Ironing Tables and Parts Thereof from the People's Republic of China (PRC): Surrogate Country List, dated July 13, 2010 (Surrogate Country List). On August 17, 2010, the Department received information to value factors of production (FOP) from Since Hardware and the Petitioner. With the exception of the surrogate value data to value labor rates, all of the surrogate values placed on the record were obtained from sources in India.

**Scope of the Order**

For purposes of this order, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this review.

Furthermore, this order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term "unassembled" ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term "complete" ironing table means product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, *e.g.,* iron rest or linen rack. The term "incomplete" ironing table means product shipped or sold as a "bare board"—*i.e.,* a metal-top table only, without the pad and cover—with or without additional features, *e.g.,* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this order under the term "certain parts thereof" consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (CBP) purposes, the Department's written description of the scope remains dispositive.

**Non-Market-Economy Status**

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering

authority. *See, e.g., Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this administrative review has contested such treatment. Accordingly, we calculated normal value (NV) in accordance with section 773(c) of the Act, which applies to NME countries.

**Surrogate Country**

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's FOP's to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined India, the Philippines, Indonesia, Thailand, Ukraine and Peru are countries comparable to the PRC in economic development for purposes of this administrative review. (*See* Memorandum to Richard Weible from Carole Showers Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Order on Floor Standing Metal-Top Ironing Tables and Certain Parts ("Ironing Tables") from the People's Republic of China dated July 8, 2010 (Surrogate Country List).)

Based on publicly available information placed on the record by interested parties (*e.g.,* production data), the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of the subject merchandise, and has publicly available and reliable data. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate country selection.

**Separate Rates**

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at *http://ia.ita.gov.policy/bull05-1.pdf.* Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 at Comment 1 (May 6, 1991) (*Sparklers*). This test was further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). (*Silicon Carbide*). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is unnecessary to determine whether it is independent from government control.

Accordingly, we have considered whether Since Hardware is independent from government control, and therefore eligible for a separate rate. The Department's separate-rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.,* export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine,* 62 FR 61754, 61758 (November 19, 1997); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

Since Hardware provided complete separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether Since Hardware is independent from government control.

**Absence of *De Jure* Control**

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR 20588 at Comment 1. The evidence provided by Since Hardware supports a finding of *de jure* absence of control based on the following: (1) An absence of restrictive stipulations associated with its business and export licenses, (2) applicable legislative enactments decentralizing control of companies; and (3) formal measures (*e.g.,* the *Foreign Trade Law*) decentralizing control of companies, *See, e.g.,* Since Hardware October 29, 2009 questionnaire response at pages A–3–A–5.

**Absence of *De Facto* Control**

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide 59 FR 22857; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic Of China,* 60 FR 22544 (May 8, 1995) The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates.

The evidence provided by Since Hardware supports a preliminary finding of *de facto* absence of government control based on the following: (1) The absence of evidence that the export prices are set by or are subject to the approval of a government agency, (2) Since Hardware has

authority to negotiate and sign contracts and other agreements, (3) Since Hardware has autonomy from government in making decisions regarding the selection of management, and (4) Since Hardware retains the proceeds of its export sales and make independent decisions regarding disposition of profits or financing of losses. *See* Since Hardware October 29, 2010 Section A questionnaire response at A–5 through A–8.

In accordance with the criteria identified in *Sparklers* and *Silicon Carbide,* the evidence placed on the record of this review by Since Hardware demonstrates an absence of *de jure* and *de facto* government control with respect to Since Hardware's exports of the subject merchandise. Accordingly, we have determined that Since Hardware has demonstrated eligibility for a separate rate.

**Fair Value Comparisons**

To determine whether Since Hardware's sales of the subject merchandise to the United States were made at prices below normal value (NV), we compared its United States prices to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice. *See* section 773(a) of the Act.

**U.S. Price**

We based U.S. price for Since Hardware on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. We deducted foreign inland freight, and foreign brokerage and handling expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act. Where appropriate, we made an addition to U.S. price for billing adjustments.

Since Hardware incurred foreign inland freight and foreign brokerage and handling expenses from PRC service providers. We therefore valued these services using Indian surrogate values (*see* "Factors of Production" section below for further discussion).

**Normal Value**

*Factors of Production (FOP)*

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government control on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaires required Since Hardware to provide information regarding the weighted-average FOP.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publically available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market-economy currency, the Department may value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc.* v. *United States,* 268 F. 3rd 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value FOPs). During the POR, Since Hardware purchased a certain packing material from a market economy supplier. Because Since Hardware purchased more than 33 percent of its total volume of this material from a market economy supplier, we used the market economy price of that material to value this input. *See* Since Hardware December 1, 2009 Section D response at Appendix D–6.

We calculated NV based on FOPs in accordance with section 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw material employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by Since Hardware for materials, energy, labor, by-products, and packing. To calculate NV, we multiplied the reported unit factor quantities by publicly available values in the surrogate country, India.

In addition, Since Hardware reported by-product sales. Consistent with the Department's determination in the investigation of *Diamond Sawblades from the PRC,* we will deduct the surrogate value of the by-product from NV because the surrogate financial statements on the record of this administrative review contain no references to the treatment of by-products, and because Since Hardware provided evidence that it sold its by-products. *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006) (*Diamond Sawblades from the PRC*), and accompanying Issues and Decision Memorandum at Comment 9, unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 35864 (June 22, 2006). This is consistent with accounting principles based on a reasonable assumption that if a company sells a by-product, the by-product necessarily incurs expenses for overhead, SG&A, and profit. *Id.*

In selecting the surrogate Indian values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. *See, e.g., Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and accompanying Issues and Decision Memorandum at Comment 2.* The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory of production. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *Sigma Corp.* v. *United States,* 117 F. 3rd 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used to value Since Hardware's FOPs may be found in the September 7, 2010 Memorandum to the File through Robert James, Program Manager, Office 7 from Michael J. Heaney International Trade Analyst: Antidumping Duty Administrative Review of Floor-Standing, Metal Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, dated September 7, 2010 (Factors Valuation Memorandum.)

The Department calculated SVs for the majority of reported FOPs purchased from NME sources using the contemporaneous, weighted average unit import value derived from the Ministry of Commerce of India (Indian Import Statistics) for the POR. The Department used Indian import data from the Global Trade Atlas (GTA) published by Global Trade Information Services, Inc. (GTIS) which is sourced

from the Directorate General of Commercial Intelligence & Statistics, Indian Ministry of Commerce, to determine the surrogate values for most raw materials, by-products and packing material inputs. The Department has disregarded statistics from NMEs, countries with generally available export subsidies, and undetermined countries, in calculating average value. In accordance with the Omnibus Trade and Competiveness Act of 1988, Conf. Report to Accompany HR. 3, HR Rep. No., 100th Cong., 2nd Session (1988), the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized. In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies. *See, e.g. Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decisions Memorandum at pages 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-To Length Carbon Quality Steel Plate from Indonesia,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decisions Memorandum at page 4; *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at page 23. For a detailed description of all surrogate values used for Since Hardware, see the Factors Valuation Memorandum.

In past cases, it has been the Department's practice to value various FOPs using import statistics of the primary selected surrogate country from the World Trade Atlas (WTA), as published by GTIS. *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review,* 74 FR 50946, 50950 (October 2, 2009). However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. dollar. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian rupee to the U.S. dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian rupees, the WTA software is limited with regard to the number of significant digits it can manage. Therefore, GTIS made a decision to change the official reporting currency for Indian data from the Indian rupee to the U.S. dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian Rupee to the U.S. dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted. *See, Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final determination of Critical Circumstances, and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

However, the data reported in the GTA software report import statistics, such as data from India, in the original reporting currency and thus these data correspond to the original currency value reported by each country. Additionally, the data reported in GTA software are reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing FOPs because the GTA import statistics are in the original reporting currency of the country from which the data are obtained and have the same level of accuracy as the original data released.

The Department valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008. These electricity rates represent actual, country-wide, publically available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided. *See* Factors Valuation Memorandum at page 6.

The Department valued water using data from the Maharashtra Industrial Development Corporation (MDIC) as it includes a wide range of industrial water tariffs. To value water, we used the average rate for industrial use from MDIC water rates at *http://www.midcindia.org*. *See* Factors Valuation Memorandum at page 6.

We valued diesel fuel using the rates provided by the OECD's International Energy Agency's publication: *Key World Energy Statistics* from 2004 and 2005. The prices are based on 2004 and 2005 first quarter prices of automotive diesel fuel retail prices. *See* Factor Valuation Memorandum at page 6.

For direct, indirect, and packing labor, pursuant to a recent decision by the Federal Circuit, we have calculated an hourly wage rate to use in valuing Since Hardware's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise. *See Dorbest Ltd.* v. *United States,* 2009–1257 at 20 (Fed. Cir. 2010). Because this wage rate does not separate labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by Since Hardware. *See* Factors Valuation Memorandum at page 5.

Since Hardware claimed that it utilized hot rolled steel as a production input of the subject merchandise. However, Since Hardware's supporting documentation provided to department officials at verification did not demonstrate Since Hardware purchased hot-rolled steel in sizes of less than 1.1 millimeters. *See* Since Hardware 2007–2008 Verification Report at pages 25–27. We, therefore, assigned the surrogate value of cold-rolled steel to value this production input.

The Department valued truck freight expenses using a per-unit average rate calculated from data on the Infobanc Web site: *http://www.infobanccom/logistics/logtruck.htm*. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POR, the Department deflated the rate using the Wholesale Price Index of India. *See* Factors Valuation Memorandum at page 7.

The Department valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India,* by the World Bank.

To value factory overhead, selling, general and administrative (SG&A) expenses, and profit the Department

used the audited financial statement of 2005–2006 Infiniti Modules Pvt. Ltd. (Infiniti Modules).

We are preliminarily granting an offset to Since Hardware for its scrap steel sales. *See* Factors Valuation Memorandum at page 3.

**Currency Conversion**

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773(A) of the Act, based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Board.

**Preliminary Results of Review**

We preliminarily determine that the following antidumping duty margins exist:

| Exporter | Margin (percent) |
|---|---|
| Since Hardware ..... | 52.06 |

**Assessment Rates**

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. For assessment purposes, where possible, we calculated importer-specific ad valorem assessment rates for ironing tables from the PRC based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above de minimis. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 157.68 percent (*see Amended Final and Order*); and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Public Comment**

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will be held 37 days after the publication of this notice, or the first workday thereafter unless the Department alters the date pursuant to 19 CFR 351.310(d). Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments and a table of authorities in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief in accordance with 19 CFR 351.310(c). Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. These preliminary results of administrative review are issued and this notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010–22898 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–580–851]**

### Dynamic Random Access Memory Semiconductors From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the countervailing duty order on dynamic random access memory semiconductors from the Republic of Korea for the period January 1, 2008, through August 10, 2008. We preliminarily find that Hynix Semiconductor, Inc. received countervailable subsidies during the period of review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection to assess

countervailing duties as detailed in the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. *See* the "Public Comment" section of this notice.

**DATES:** *Effective Date*: September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Shane Subler or Jennifer Meek, Office of AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3069, 14th Street, and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189 and (202) 482–2778, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 11, 2003, the Department of Commerce ("the Department") published a countervailing duty order on dynamic random access memory semiconductors ("DRAMS") From the Republic of Korea ("Korea"). *See Notice of Countervailing Duty Order: Dynamic Random Access Memory Semiconductors From the Republic of Korea,* 68 FR 47546 (August 11, 2003) ("*CVD Order*"). On August 14, 2009, we published a notice of "Opportunity to Request Administrative Review" for this countervailing duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 41120 (August 14, 2009). On August 18, 2009, we received a request for review from Hynix Semiconductor, Inc. ("Hynix"). On August 21, 2009, we received a request for review of Hynix and its affiliates from the petitioner, Micron Technology, Inc. ("Micron"). In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on September 22, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 48224 (September 22, 2009).

On December 22, 2009, we issued countervailing duty questionnaires to the Government of Korea ("GOK") and Hynix. We received responses to these questionnaires on February 25, 2010, and February 26, 2010, from Hynix and the GOK, respectively. On May 27, 2010, we issued supplemental questionnaires to Hynix and the GOK. We received responses on June 3, 2010, and June 25, 2010, respectively.

We received new subsidy allegations from Micron on October 5, 2009.[1] On December 22, 2009, we initiated an investigation of preferential income tax treatment for Hynix's 2001 and 2002 debt restructurings. *See* Memorandum to Susan Kuhbach, Director, Office 1, "Sixth Countervailing Duty Administrative Review: Dynamic Random Access Memory Semiconductors From Korea: New Subsidy Allegations Memorandum" (December 22, 2009) ("NSA Memo"), available in the Central Records Unit, Room 1117 of the main Department building.

On April 20, 2010, we published a postponement of the preliminary results in this review until September 7, 2010. *See Dynamic Random Access Memory Semiconductors From the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review,* 75 FR 20564 (April 20, 2010).

## Scope of the Order

The products covered by the order are DRAMS from Korea, whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in Korea, but assembled into finished semiconductors outside Korea are also included in the scope. Processed wafers fabricated outside Korea and assembled into finished semiconductors in Korea are not included in the scope.

The scope of the order additionally includes memory modules containing DRAMS from Korea. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. The order also covers future DRAMS module types.

The scope of the order additionally includes, but is not limited to, video random access memory and synchronous graphics random access memory, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of the order are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with U.S. Customs and Border Protection ("CBP") that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of the order does not include DRAMS or memory modules that are re-imported for repair or replacement.

The DRAMS subject to the order are currently classifiable under subheadings 8542.21.8005, 8542.21.8020 through 8542.21.8030, and 8542.32.0001 through 8542.32.0023 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The memory modules containing DRAMS from Korea, described above, are currently classifiable under subheadings 8473.30.1040, 8473.30.1080, 8473.30.1140, and 8473.30.1180 of the HTSUS. Removable memory modules placed on motherboards are classifiable under subheadings 8443.99.2500, 8443.99.2550, 8471.50.0085, 8471.50.0150, 8517.30.5000, 8517.50.1000, 8517.50.5000, 8517.50.9000, 8517.61.0000, 8517.62.0010, 8517.62.0050, 8517.69.0000, 8517.70.0000, 8517.90.3400, 8517.90.3600, 8517.90.3800, 8517.90.4400, 8542.21.8005, 8542.21.8020, 8542.21.8021, 8542.21.8022, 8542.21.8023, 8542.21.8024, 8542.21.8025, 8542.21.8026, 8542.21.8027, 8542.21.8028, 8542.21.8029, 8542.21.8030, 8542.31.0000, 8542.33.0000, 8542.39.0000, 8543.89.9300, and 8543.89.9600 of the HTSUS. However, the product description, and not the HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope.

## Scope Rulings

On December 29, 2004, the Department received a request from Cisco Systems, Inc., to determine whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the order. *See CVD Order.* The Department initiated a scope inquiry pursuant to 19 CFR 351.225(e) on February 4, 2005. On January 12, 2006, the Department issued a final

[1] *See* submission from Micron to the Department, Re: Dynamic Random Access Memory Semiconductors From Korea: New Subsidy Allegations (October 5, 2009) ("New Subsidy Allegations").

scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are not within the scope of the *CVD Order* provided that the importer certifies that it will destroy any memory modules that are removed for repair or refurbishment. *See* Memorandum from Stephen J. Claeys to David M. Spooner, regarding Final Scope Ruling, Countervailing Duty Order on DRAMs From the Republic of Korea (January 12, 2006).

**Period of Review**

The period for which we are measuring subsidies, *i.e.,* the period of review ("POR"), is January 1, 2008, through August 10, 2008.

**Changes in Ownership**

Effective June 30, 2003, the Department adopted a new methodology for analyzing privatizations in the countervailing duty context. *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act,* 68 FR 37125 (June 23, 2003). The Department's new methodology is based on a rebuttable "baseline" presumption that non-recurring, allocable subsidies continue to benefit the subsidy recipient throughout the allocation period (which normally corresponds to the average useful life ("AUL") of the recipient's assets). However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a change in ownership occurred in which the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm's-length transaction for fair market value. Hynix's ownership changed during the AUL period as a result of debt-to-equity conversions in December 2002 and various asset sales. In addition, Hynix reported that its ownership changed in 2006 because Hynix's Share Management Council decreased its ownership share in Hynix from 50.6 percent to 36 percent. However, in this administrative review, Hynix did not challenge this baseline presumption. *See* Hynix's February 25, 2010, questionnaire response at 13.

**Subsidies Valuation Information**

*Allocation Period*

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the Department's regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the "IRS Tables"). For DRAMS, the IRS Tables prescribe an AUL of five years. During this review, none of the interested parties disputed this allocation period. Therefore, we continue to allocate non-recurring benefits over the five-year AUL.

*Discount Rates and Benchmarks for Loans*

For loans that we found countervailable in the investigation or in the prior administrative reviews, and which continued to be outstanding during the POR, we have used the benchmarks from the prior administrative reviews.

For long-term, won-denominated loans originating in 1986 through 1995, we used the average interest rate for three-year corporate bonds as reported by the Bank of Korea ("BOK") or the International Monetary Fund's ("IMF's") *International Financial Statistics Yearbook.*

For long-term won-denominated loans that originated in the years in which we previously determined Hynix to be uncreditworthy (2000 through 2003), we used the formula described in 19 CFR 351.505(a)(3)(iii) to determine the benchmark interest rate. We did not use the rates on Hynix's corporate bonds for 2000–2003 for any calculations because Hynix either did not obtain bonds or obtained bonds through countervailable debt restructurings during those years. For the probability of default by an uncreditworthy company, we used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997" (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investors Service: "Statistical Tables of Default Rates and Recovery Rates" (February 1998). For the commercial interest rates charged to creditworthy borrowers, we used the rates for won-denominated corporate bonds as reported by the BOK and the U.S. dollar lending rates published by the IMF for each year.

For countervailable short-term and long-term foreign currency-denominated loans, pursuant to 19 CFR 351.505(a)(2)(iv), we would normally use an annual average of the interest rates on comparable commercial loans during the year in which the government-provided loans were taken out. For countervailable variable-rate loans outstanding during the POR, pursuant to 19 CFR 351.505(a)(5)(i), we used the interest rates of variable-rate lending instruments issued during the year in which the government loans were issued. Where such loans were unavailable, the Department, consistent with 19 CFR 351.505(a)(3)(ii), followed our prior practice and relied upon lending rates reported in the IMF's *International Financial Statistics Yearbook. See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors From the Republic of Korea,* 68 FR 37122 (June 23, 2003) and accompanying Issues and Decision Memorandum at 5–7.

**Analysis of Programs**

*I. Program Preliminarily Determined To Confer Subsidies—Income Tax Treatment of Hynix's Debt Restructurings*

In the NSA Memo, we initiated an investigation into the tax treatment of Hynix's debt restructurings under which Hynix issued shares in 2002 and 2003. In their respective February 25, 2010 and February 26, 2010, questionnaire responses, Hynix and the GOK responded to the Department's standard questions on this program and provided additional explanation. On May 27, 2010, we sent a supplemental questionnaire to the GOK on this program. The GOK responded on June 25, 2010.

Based on information in the GOK's and Hynix's responses, we preliminarily find the GOK's tax treatment of the debt-for-equity swap for which Hynix issued shares in 2002 to be countervailable.[2] A ruling by the Korean tax authority in 2000 (Bubin 46012–1608, July 20, 2000) established new rules for the tax treatment of debt-for-equity swaps by companies undergoing voluntary restructuring. The ruling stated:

> In case a domestic corporation carries out debt-equity swap in accordance with the corporate normalization plan, with respect to the amount accounted, pursuant to the corporate financial accounting standards, as debt exemption gains resulting from the amount of difference between the issuance price of the concerned stock and its market price, said amount ought to be deemed as the

[2] In the NSA Memo, we initiated an investigation into the GOK's tax treatment of the debt-for-equity swaps for which Hynix issued shares in 2002 and 2003. Based on proprietary information in Hynix's February 25, 2010, questionnaire response, however, we preliminarily find that only the 2002 issuance applies to this POR. *See* Memorandum from Shane Subler to Susan Kuhbach, "Preliminary Results Calculations for Hynix Semiconductor, Inc.," (September 7, 2010).

amount in excess of the par value of the stock shares issued * * * and as such, said amount shall not be included into the taxable income or deductible expense of each (applicable) business year.[3]

General Korean tax principles treat decreased liabilities through the exemption or lapse of debts as a taxable gain for income tax purposes.[4] Under the Bubin 46012–1608 ruling, however, the GOK deemed that any gain from debt forgiveness occurring through a debt-for-equity swap could be excluded from taxable income.

On June 7, 2002, in the context of its restructuring under the GOK's Corporate Restructuring Promotion Act ("CRPA"), Hynix converted bonds to equity and issued shares to its creditors. Hynix's 2002 financial statements show that the issue price of these shares exceeded the market value of the shares on June 7, 2002.[5] Because of the Bubin 46012–1608 ruling, Hynix did not include the difference between the issue price and the market price of the shares as a gain for its 2002 tax year taxable income. Due to losses and loss carryforwards in 2002 and subsequent years, the exclusion of this amount from Hynix's taxable income in 2002 did not affect the amount of taxes owed by Hynix until tax year 2007.

We preliminarily find that the exclusion of the gain from Hynix's taxable income constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Tariff Act of 1930, as amended ("the Act"), because the GOK forewent income tax revenue that it otherwise would have collected in the absence of the exclusion. We also find that Hynix received a benefit under 19 CFR 351.509(a) because the exemption reduced the base (*i.e.,* Hynix's taxable income) used to calculate Hynix's income taxes for the 2007 tax year. Thus, a benefit exists to the extent that the income taxes paid by Hynix as a result of the exclusion were less than the taxes Hynix would have paid in the absence of the exclusion. Regarding timing, under 19 CFR 351.509(b), the Department will normally consider the date of receipt of a benefit from a tax exemption or remission as the date on which the firm filed its tax return. Because Hynix received this benefit when it filed its 2007 tax year tax return, we preliminarily find that Hynix received the benefit during the POR.

Regarding specificity, in our May 27, 2010, supplemental questionnaire, we asked the GOK to report the number of companies that underwent debt-for-equity swaps in the ROK from 2001 through 2003. The GOK responded that it does not maintain information on which or how many companies went through debt-to-equity swaps during the period.[6] Thus, record information does not allow us to determine actual use of the program.

Section 776(a)(1) of the Act states that the Department may use "facts available" if necessary information is not on the record. Information in Hynix's financial statements and in a press release from the GOK's Financial Supervisory Service ("FSS") shows that Hynix accounted for approximately 36 percent of the debt swapped for equity under the CRPA.[7] We preliminarily determine that this percentage provides the best proxy for measuring Hynix's share of the benefit provided by the Bubin 46012–1608 ruling. We believe this is a reasonable measure because a company's share of the benefit provided by the exclusion is likely to be roughly equal to the company's share of debt-for-equity swaps under the CRPA. On this basis, we preliminarily find the exclusion to be specific to Hynix under section 771(5A)(D)(iii)(III) of the Act because Hynix received a disproportionately large share of the income tax benefits relative to its size among all companies in Korea.

To calculate the benefit under this program, in accordance with 19 CFR 351.509(a), we divided the income taxes Hynix otherwise would have paid in the absence of the exclusion by Hynix's total sales during the POR. On this basis, we preliminarily determine that Hynix received a countervailable subsidy of 2.84 percent *ad valorem.*

*II. Programs Previously Determined To Confer Subsidies*

We examined the following programs determined to confer subsidies in the investigation and prior administrative reviews.

A. GOK Entrustment or Direction Prior to 2004

In the investigation, the Department determined that the GOK entrusted or directed creditor banks to participate in financial restructuring programs, and to provide credit and other funds to Hynix, in order to assist Hynix through its financial difficulties. The financial assistance provided to Hynix by its creditors took various forms, including new loans, convertible and other bonds, extensions of maturities and interest rate reductions on existing debt (which we treated as new loans), Documents Against Acceptance financing, usance financing, overdraft lines of credit, debt forgiveness, and debt-for-equity swaps. The Department determined that these were financial contributions that constituted countervailable subsidies during the period of investigation.

In prior administrative reviews, the Department also found that the GOK continued to entrust or direct Hynix's creditors to provide financial assistance to Hynix throughout 2002 and 2003. The financial assistance provided to Hynix during this period included the December 2002 debt-for-equity swap and the extensions of maturities and/or interest rate deductions on existing debt.

With the exception of loans outstanding during the POR, all forms of assistance under GOK Entrustment or Direction Prior to 2004 were either fully allocated prior to the POR or were not outstanding during the POR. Thus, we have only calculated the benefit from loans outstanding during the POR. In calculating the benefit, we have followed the same methodology used in prior administrative reviews. We followed the methodology described at 19 CFR 351.505, using the benchmarks described in the "Discount Rates and Benchmarks for Loans" section above.

We divided the total benefit from the outstanding loans by Hynix's POR sales. On this basis, we preliminarily determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem* during the POR. Therefore, consistent with our past practice, we did not include this program in our preliminary net countervailing duty rate. *See, e.g., Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty*

[3] *See* Micron's New Subsidy Allegations at 6 and Exhibit 13.

[4] *See* "Korean Taxation," Ministry of Finance and Economy (2005), at page 90, Chapter III, 5(a)(7); provided at Attachment 2 of Micron's New Subsidy Allegations. Even though the guide is a 2005 edition, the guide presents established Korean tax principles, not a set of new principles or rules for 2005.

[5] Hynix's financial statements show that the issue price of the shares was 708 won per share; the market price of Hynix's shares on June 7, 2002, was 390 won per share. *See* Hynix's 2002 Non-Consolidated Financial Statements at page 60 (in Micron's New Subsidy Allegations at Attachment 7); *see also* Micron's New Subsidy Allegations at Attachment 9.

[6] *See* the GOK's June 25, 2010, supplemental questionnaire response at 3.

[7] *See* Attachment 7 of Micron's New Subsidy Allegations (Hynix's 2002 Non-Consolidated Financial Statements at 60; *see also id.* at Attachment 8 (Hynix's 2003 Non-Consolidated Financial Statements at 45). The financial statements show that Hynix swapped debts totaling 4.84 trillion won for equity through the 2002 and 2003 stock issuances. The FSS press release (Attachment 26 of Micron's New Subsidy Allegations) shows that companies swapped a total of 13.6 trillion won of debt for equity under the CRPA. Thus, 4.84 trillion won / 13.6 trillion won = 36 percent.

*Determination,* 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum at 15 ("*CFS*"); and *Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France,* 70 FR 39998 (July 12, 2005), and accompanying Issues and Decision Memorandum at "Purchases at Prices that Constitute 'More than Adequate Remuneration,'" ("*Uranium from France*") (citing *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada,* 69 FR 75917 (December 20, 2004), and accompanying Issues and Decision Memorandum at "Other Programs Determined to Confer Subsidies").

B. 21st Century Frontier R&D Program

The 21st Century Frontier R&D Program ("21st Century Program") was established in 1999 with a structure and governing regulatory framework similar to those of the G–7/HAN Program, and for a similar purpose, *i.e.,* to promote greater competitiveness in science and technology. The 21st Century Program provides long-term interest-free loans in the form of matching funds. Repayment of program funds is made in the form of "technology usance fees" upon completion of the project, pursuant to a schedule established under a technology execution or implementation contract.

Hynix reported that it had loans from the 21st Century Program outstanding during the POR. *See* Hynix's February 25, 2010 questionnaire response at 16–17 and Exhibit 10.

In the investigation, we determined that this program conferred a countervailable subsidy on Hynix. No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we continue to find that these loans confer a countervailable subsidy.

To calculate the benefit of these loans during the POR, we compared the interest actually paid on the loans during the POR to what Hynix would have paid under the benchmark described in the "Discount Rates and Benchmarks for Loans" section above. We then divided the benefit by Hynix's total sales in the POR to calculate the countervailable subsidy rate. On this basis, we preliminarily find countervailable benefits of less than 0.005 percent *ad valorem* during the POR. Therefore, consistent with our past practice, we did not include this program in our preliminary net countervailing duty rate. *See CFS* and *Uranium from France.*

C. Import Duty Reduction Program for Certain Factory Automation Items

Article 95(1).4 of the Korean Customs Act provides for import duty reductions on imports of "machines, instruments and facilities (including the constituent machines and tools) and key parts designated by the Ordinance of the Ministry of Finance and Economy for a factory automatization applying machines, electronics or data processing techniques."

Hynix reported that it had received duty reductions under this program during the POR. *See* Hynix's February 25, 2010 questionnaire response at 17–18 and Exhibit 13.

In a prior administrative review, the Department found that the above program provided a financial contribution in the form of revenue forgone and a benefit in the amount of the duty savings. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 73 FR 14218 (March 17, 2008), and the accompanying Issues and Decision Memorandum at 6—7 and Comment 6. The Department also found the program to be *de facto* specific under section 771(5A)(D)(iii)(III) of the Act. *Id.* No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we continue to find that these duty reductions confer a countervailable subsidy.

To calculate the benefit, we divided the total duty savings Hynix received during the POR by Hynix's total sales during the POR. On this basis, we preliminarily find countervailable benefits of less than 0.005 percent *ad valorem* during the POR. Therefore, consistent with our past practice, we did not include this program in our preliminary net countervailing duty rate. *See CFS* and *Uranium from France.*

D. Import-Export Bank of Korea Import Financing

As outlined in Article 18, paragraph 1, subparagraph 4 of the Import-Export Bank of Korea ("KEXIM") Act, the "Import Financing Program" is provided to Korean importers to facilitate their purchase of essential materials, major resources, and operating equipment, the stable and timely supply of which is essential to the stability of the general economy. The equipment and materials eligible to be imported under the program fall under 13 headings listed in Article 14 of the KEXIM Business Manual. The listed items range from raw materials to factory automation equipment and include products and materials described in government notices.

Further, according to the GOK, any Korean company is eligible for the "Import Financing Program" as long as the equipment or material appears under the 13 headings of eligible items, the company can satisfy the financial criteria laid out in "KEXIM's Credit Extension Regulation," and KEXIM's Credit Extension Committee approves the financing application. Regarding the last item, the GOK stated that all decisions to offer this financing are based on the application and financial status of the applicant company.

Hynix carried balances into the POR on loans received from KEXIM under this program in 2006 and 2007. *See* Hynix's February 25, 2010 supplemental questionnaire response at 18 and Exhibit 10.

In a prior administrative review, the Department found that the above program provided a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and also provided benefits equal to the difference between what Hynix paid on its loans and the amount it would have paid on comparable commercials loans within the meaning of section 771(5)(E)(ii) of the Act. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 60238, 60239 (November 20, 2009). The Department also found the program to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. *Id.* No interested party provided new evidence that would lead us to reconsider our earlier finding. Therefore, we continue to find this program to be countervailable.

To calculate the benefit under this program, we used the benchmarks described in the "Discount Rates and Benchmarks for Loans" section above, as well as the methodology described in 19 CFR 351.505. We then divided the benefit during the POR by Hynix's total sales during the POR. On this basis, we preliminarily determine that Hynix received a countervailable subsidy of 0.10 percent *ad valorem* under this program.

*III. Programs Preliminarily Found To Have Provided No Benefits*

A. KEXIM Short-Term Export Financing

KEXIM provides short-term export financing to small-, medium- and large-sized companies (not including companies included in the largest five conglomerates in the ROK, unless the company's headquarters is located

outside the Seoul Metropolitan area). The loans are not tied to particular export transactions. However, a company, along with the financing application, must provide its export performance periodically for review by KEXIM. Further, any loan agreement may only cover an amount ranging from 50 to 90 percent of the company's export performance up to 30 billion won.

Hynix carried a balance on a loan under this program during the POR and provided documentation (*e.g.* loan application, approval document, and loan agreement), as well as data regarding the loan amount and interest paid during the POR. *See* Hynix's February 25, 2010 questionnaire response at Exhibits 10, 12, and 18. Based on Hynix's submitted interest payment information for this loan, we preliminarily determine that the interest Hynix paid was greater than the interest Hynix would have paid under the benchmark interest rate. Thus, we preliminarily determine that Hynix received no benefit from these loans during the POR.

B. Export Insurance

At pages 22–25 of its February 25, 2010, questionnaire response, Hynix reported that it purchased short-term export insurance from the Korea Export Insurance Corporation ("KEIC") during the POR. On page 1 of its supplemental questionnaire response dated June 3, 2010, Hynix stated that it received no insurance payouts from the KEIC during the POR and otherwise made no claims on KEIC insurance.

Under 19 CFR 351.520(a)(2), the Department will normally calculate the benefit from an export insurance program as the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program. Because Hynix stated that it did not receive any payouts from the KEIC during the POR, we preliminarily determine that Hynix received no benefit from this program during the POR.

*IV. Programs Previously Found Not To Have Been Used or Provided No Benefits*

We preliminarily determine that the following programs were not used during the POR:

A. Reserve for Research and Human Resources Development (formerly Technological Development Reserve) (Article 9 of the Restriction of Special Taxation Act ("RSTA")/formerly, Article 8 of Tax Reduction and Exemption Control Act ("TERCL"))

B. Tax Credit for Investment in Facilities for Productivity Enhancement (Article 24 of RSTA/Article 25 of TERCL)

C. Tax Credit for Investment in Facilities for Special Purposes (Article 25 of RSTA)

D. Reserve for Overseas Market Development (formerly, Article 17 of TERCL)

E. Reserve for Export Loss (formerly, Article 16 of TERCL)

F. Tax Exemption for Foreign Technicians (Article 18 of RSTA)

G. Reduction of Tax Regarding the Movement of a Factory That Has Been Operated for More Than Five Years (Article 71 of RSTA)

H. Tax Reductions or Exemption on Foreign Investments under Article 9 of the Foreign Investment Promotion Act ("FIPA")/FIPA (Formerly Foreign Capital Inducement Law)

I. Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates

J. Electricity Discounts Under the Requested Load Adjustment ("RLA") Program

K. Import Duty Reduction for Cutting Edge Products

L. System IC 2010 Project

M. Operation G–7/HAN Program

**Preliminary Results of Review**

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Hynix, the producer/exporter covered by this administrative review. We preliminarily determine that the total estimated net countervailable subsidy rate for Hynix for the POR is 2.94 percent *ad valorem.*

If these preliminary results are adopted in our final results of this review, 15 days after publication of the final results of this review the Department will instruct CBP to liquidate shipments of DRAMS by Hynix entered or withdrawn from warehouse, for consumption from January 1, 2008, through August 10, 2008, at 2.94 percent *ad valorem* of the entered value.

On October 3, 2008, the Department published a **Federal Register** notice that, *inter alia,* revoked this order, effective August 11, 2008. *See Dynamic Random Access Memory Semiconductors From the Republic of Korea: Final Results of Sunset Review and Revocation of Order,* 73 FR 57594 (October 3, 2008). As a result, CBP is no longer suspending liquidation for entries of subject merchandise occurring after the revocation. Therefore, there is no need to issue new cash deposit instructions in the final results of this administrative review.

**Public Comment**

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Unless otherwise specified, the hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010–22889 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–816]**

### Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Sixteenth Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to timely requests, the Department of Commerce (the Department) is conducting the sixteenth administrative review of the antidumping order on corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea).[1] This review covers eight manufacturers and/or exporters (collectively, the respondents) of the subject merchandise: LG Chem., Ltd. (LG Chem); Haewon MSC Co. Ltd. (Haewon); Dongbu Steel Co., Ltd.,

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 48224, 48225 (September 22, 2009) (*Initiation Notice*).

(Dongbu); Hyundai HYSCO (HYSCO); Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, POSCO); Dongkuk Industries Co., Ltd. (Dongkuk); LG Hausys, Ltd. (Hausys); and Union Steel Manufacturing Co., Ltd. (Union). The period of review (POR) is August 1, 2008, through July 31, 2009. We preliminarily determine that Union and Dongbu made sales of subject merchandise at less than normal value (NV). We preliminarily determine that HYSCO and POSCO have not made sales below NV.

In addition, based on the preliminary results for the respondents selected for individual review, we have preliminarily determined a margin for those companies that were not selected for individual review. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

**DATES:** *Effective Date:* September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jolanta Lawska (HYSCO), Victoria Cho (POSCO), Dennis McClure (Union) or Christopher Hargett (Dongbu), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8362, (202) 482–5075, (202) 482–5973, and (202) 482–4161, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 19, 1993, the Department published the antidumping order on CORE from Korea. *See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 58 FR 44159 (August 19, 1993) (*Orders on Certain Steel from Korea*). On August 3, 2009, we published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 38397 (August 3, 2009). On August 31, 2009, respondents and petitioners [2] requested a review of Dongbu, HYSCO, POSCO, Union, Dongkuk, Haewon, Hausys, and LG Chem. The Department initiated a review of each of the companies for which a review was requested. *See Initiation Notice,* 74 FR at 48225.

On December 7, 2008, the Department selected Dongbu, POSCO, HYSCO and Union as mandatory respondents in this review. *See* Memorandum from Dennis McClure, International Trade Compliance Analyst, through James Terpstra, Program Manager, to Melissa Skinner, Director, Office 3, entitled "2008–2009 Antidumping Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Selection of Respondents for Individual Review," dated December 7, 2009. The Department indicated that it would calculate a weighted-average of the mandatory respondents' margins to apply to those companies not selected for individual examination.

During the most recently completed segments of the proceeding in which HYSCO, Dongbu, POSCO and Union participated,[3] the Department disregarded sales below the cost of production (COP) for each of these companies. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP. We instructed HYSCO, Dongbu, POSCO and Union to respond to sections A through E of the initial questionnaire,[4] which we issued on December 7, 2009.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorms," dated February 12, 2010. As a result of this tolling, the revised deadline for the preliminary results of this review became May 10, 2010.

On May 10, 2010, the Department published a notice extending the time period for issuing the preliminary results of the sixteenth administrative review to September 7, 2010.[5]

## HYSCO

On January 27, 2010, HYSCO submitted its section A response to the Department's initial questionnaire. On February 12, 2010, HYSCO submitted its sections B through D response to the Department's initial questionnaire. HYSCO submitted its response to the Department's supplemental questionnaires for sections A through C on June 23, 2010, and August 11, 2010. HYSCO submitted its response to the Department's supplemental questionnaires for section D on June 23, 2010, June 25, 2010, August 4, 2010, August 11, 2010, August 18, 2010, and August 23, 2010.

## Union

On January 21, 2010, Union submitted its section A response to the initial questionnaire. On February 4, 2010, Union submitted its response to sections B and C and D of the Department's questionnaire. On May 28, 2010, and July 15, 2010, Union submitted its responses to the Department's supplemental questionnaires for sections A through C. On June 7, 2010, Union submitted its response to the Department's supplemental questionnaire for section D regarding the purchase of major inputs from POSCO. On June 11, 2010, Union submitted its response to the Department's supplemental questionnaire for sections A and D. On July 20, 2010, Union submitted its response to an additional supplemental questionnaire for section D. On August 18, 2010, Union submitted a response to an additional supplemental questionnaire for section D.

## POSCO

On January 20, 2010, POSCO submitted its sections A through D response to the Department's initial questionnaire. On June 14, 2010, POSCO submitted its response to the Department's first supplemental questionnaire for sections A through D. On August 10, 2010, POSCO submitted its response to the Department's second

[2] Petitioners are the United States Steel Corporation (U.S. Steel), Nucor Corporation (Nucor), and Mittal Steel USA ISG, Inc. (Mittal Steel USA).

[3] *See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review,* 75 FR 13490 (March 22, 2010) (*CORE 15 Final Results*); *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission,* 74 FR 11082 (March 16, 2009) (*CORE 14 Final Results*).

[4] Section A: Organization, Accounting Practices, Markets and Merchandise; Section B: Comparison Market Sales; Section C: Sales to the United States; Section D: Cost of Production and Constructed Value; Section E: Further Manufacturing.

[5] *See Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 25841 (May 10, 2010).

supplemental questionnaire for section D. On August 25, 2010, POSCO submitted a voluntary correction to exhibit 25 of its June 14, 2010, first supplemental section D response.

**Dongbu**

On January 13, 2010, and February 3, 2010, Dongbu submitted its section A and sections B through D responses to the Department's initial questionnaire. Dongbu submitted its response to the Department's supplemental questionnaires for sections A through D on May 18, 2010, and July 16, 2009, and August 3, 2010. Dongbu submitted a reconciliation of its home market and U.S. sales databases on August 17, 2010.

**Period of Review**

The POR covered by this review is August 1, 2008, through July 31, 2009.

**Scope of the Order**

This order covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in the order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process including products which have been beveled or rounded at the edges (*i.e.,* products which have been "worked after rolling"). Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all CORE products produced by the respondents, covered by the scope of the order, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to CORE sold in the United States.

Where there were no sales in the ordinary course of trade of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the Appendix V physical characteristics reported by each respondent.

**Normal Value Comparisons**

To determine whether sales of CORE by the respondents to the United States were made at less than NV, we compared the Export Price (EP) or Constructed Export Price (CEP) to the NV, as described in the "Export Price/ Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. Regarding HYSCO, Union and Dongbu, because we are using quarterly costs, we have not made price-to-price comparisons outside of a quarter to lessen the potential distortion to sales prices which result from significantly changing costs.[6]

**Export Price/Constructed Export Price**

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed prices and the applicable delivery terms to the first unaffiliated customer in, or for exportation to, the United States.

In accordance with section 772(a) of the Act, we calculated EP for a number of Union's U.S. sales because these sales were made before the date of importation and were sales directly to unaffiliated customers in the United States, and because CEP methodology was not otherwise indicated. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where

[6] *See* Memorandum from Jolanta Lawska through James Terpstra, Program Manager Office 3, to the File, entitled "Preliminary Results in the 16th Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea: Calculation Memorandum for Hyundai HYSCO," dated September 7, 2010 (HYSCO Calc Memo); Memorandum from Victoria Cho through James Terpstra, Program Manager Office 3, to the File, entitled "Preliminary Results in the 16th Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea: Calculation Memorandum for Calculation Memorandum for Pohang Iron & Steel Company, Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group)," dated September 7, 2010 (POSCO Calc Memo); Memorandum from Dennis McClure through James Terpstra, Program Manager Office 3, to the File, entitled "Preliminary Results in the 16th Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea: Calculation Memorandum for Union Steel Manufacturing Inc.," dated September 7, 2010 (Union Calc Memo); and Memorandum from Christopher Hargett through James Terpstra, Program Manager Office 3, to the File, entitled "Preliminary Results in the 16th Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea: Calculation Memorandum for Dongbu Steel," dated September 7, 2010 (Dongbu Calc Memo) (collectively "Calculation Memos for the 16th Review"), the public versions of which are on file in the Central Record Unit, Room 7046, of the main Department building.

appropriate, foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, and U.S. customs duty.

In accordance with section 772(b) of the Act, we calculated CEP where the record established that sales made by HYSCO, POSCO, Dongbu, and Union were made in the United States after importation. HYSCO's, POSCO's, Dongbu's and Union's respective affiliates in the United States (1) took title to the subject merchandise and (2) invoiced and received payment from the unaffiliated U.S. customers for their sales of the subject merchandise to those U.S. customers. Thus, where appropriate, the Department determined that these U.S. sales should be classified as CEP transactions under section 772(b) of the Act. Where appropriate, we made deductions from the starting price for foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, U.S. customs duty, credit expenses, warranty expenses, commissions, inventory carrying costs incurred in the United States, and other indirect selling expenses in the United States associated with economic activity in the United States. *See* sections 772(c)(2)(A) and 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. Where appropriate, we added interest revenue to the gross unit price.

**HYSCO's Entries of Subject Merchandise That Were Further Manufactured and Sold as Non-Subject Merchandise in the United States**

In its section A questionnaire response, HYSCO requested that the Department excuse it from reporting information for certain POR sales of subject merchandise imported by its wholly owned U.S. subsidiary, HYSCO America Company (HAC), that were further manufactured after importation and sold as non-subject merchandise in the United States, claiming that determining CEP for sales through HAC would be unreasonably burdensome.

Section 772(e) of the Act provides that when the value added in the United States by an affiliated party is likely to exceed substantially the value of the subject merchandise, the Department shall use one of the following prices to determine CEP if there is a sufficient quantity of sales to provide a reasonable basis of comparison and the use of such sales is appropriate: (1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

The record evidence shows that the value added by the affiliated party to the subject merchandise after importation in the United States was significantly greater than the 65 percent threshold we use in determining whether the value added in the United States by an affiliated party substantially exceeds the value of the subject merchandise. *See* 19 CFR 351.402(c)(2). We then considered whether there were sales of identical subject merchandise or other subject merchandise sold in sufficient quantities by the exporter or producer to an unaffiliated person that could provide a reasonable basis of comparison. In addition to the sales to HAC that were further manufactured, HYSCO also had CEP sales of similar, but not identical, subject merchandise to unaffiliated customers in the United States in back-to-back transactions through another HYSCO affiliate in the United States, Hyundai HYSCO USA (HHU).

The appropriate methodology for determining the CEP for sales whose value has been substantially increased through U.S. further manufacturing generally must be made on a case-by-case basis. In this instance, we find that there is a reasonable quantity of sales of subject merchandise to an unaffiliated person for comparison purposes. *See* HYSCO Calc Memo. Furthermore, there is no other reasonable methodology for determining CEP for HAC's CEP sales. Therefore, we relied on HYSCO's other sales of similar merchandise to unaffiliated parties in the United States as the basis for calculating CEP for HYSCO's sales through HAC, which is consistent with the four previous administrative reviews of CORE from Korea.[7]

**Normal Value**

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade. We increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act.

Where appropriate, we deducted inland freight from the plant to distribution warehouse, warehouse expense, inland freight from the plant/warehouse to customer, and packing, pursuant to section 773(a)(6)(B) of the Act. Additionally, we made adjustments to NV, where appropriate, for credit and warranty expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Where appropriate, we added interest revenue and applied billing adjustments to the gross unit price.

We also made adjustments for Union, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other. Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less. *See* 19 CFR 351.401(e).

For purposes of calculating NV, section 771(16) of the Act defines "foreign like product" as merchandise which is either (1) identical or (2) similar to the merchandise sold in the United States. When no identical products are sold in the home market, the products which are most similar to the product sold in the United States are identified. For the non-identical or most similar products which are identified based on the Department's product matching criteria, an adjustment is made to the NV for differences in cost attributable to differences in the actual physical differences between the products sold in the United States and the home market. *See* 19 CFR 351.411 and section 773(a)(6)(C)(ii) of the Act.

**Cost of Production**

As stated above, in the most recently completed segments of the proceeding in which HYSCO, POSCO, Dongbu and Union participated, the Department found and disregarded sales that failed the cost test for each of these

[7] *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review,* 74 FR 46110, 46112 (September 8, 2009) (unchanged in *CORE 15 Final Results*); *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review,* 73 FR 52267, 52270 (September 9, 2008) (unchanged in *CORE 14 Final Results*).

companies. Therefore, for this review, the Department has reasonable grounds to believe or suspect that sales of the foreign like products under consideration for the determination of NV may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, the Department conducted a COP investigation of sales in the home market by HYSCO, POSCO, Dongbu and Union.

*A. Cost Reporting Period*

The Department's normal practice is to calculate an annual weighted-average cost for the POR. *See, e.g., Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review,* 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada,* 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). However, the Department recognizes that possible distortions may result if we use our normal annual-average cost method during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, the Department evaluates the case-specific record evidence using two primary factors: (1) The change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sale prices during the shorter averaging periods could be reasonably linked with the COP or constructed value (CV) during the same shorter averaging periods. *See Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review,* 75 FR 6627 (February 10, 2010) (*SSSS from Mexico*), and accompanying Issues and Decision Memorandum at Comment 6 and *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review,* 73 FR 75398 (December 11, 2008) (*SSPC from Belgium*), and accompanying Issues and Decision Memorandum at Comment 4.

1. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-cost approach. *See SSPC from Belgium* at Comment 4. In the instant case, record evidence shows that Union, Dongbu, and HYSCO experienced significant changes (*i.e.,* changes that exceeded 25 percent) between the high and low quarterly COM during the POR for the selected products (*i.e.,* CONNUMs) with the highest sales volumes. This change in COM is primarily attributable to the price volatility for substrate inputs used in the manufacture of CORE. Substrate is the major input consumed in the production of CORE. We found that prices for substrate changed significantly throughout the POR and, as a result, directly affected the cost of the material inputs consumed by Union, Dongbu, and HYSCO.[8]

2. Linkage Between Cost and Sale Price Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR. *See, e.g., SSSS from Mexico* at Comment 6, and *SSPC from Belgium* at Comment 4. The Department's definition of "linkage" does not require direct traceability between specific sales and their specific production costs, but rather relies on whether there are elements that would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. *See SSPC from Belgium* at Comment 4. These correlative elements may be measured and defined in a number of ways depending on the associated industry and the overall production and sales processes. To determine whether a reasonable correlation existed between the sales prices and their underlying costs during the POR for each respondent, we compared weighted-average quarterly prices to the corresponding quarterly COM for the five CONNUMs with the highest volume of sales in each of the comparison market and the United States market. Our comparison reveals that sale prices and costs for each of the sample CONNUMs generally trended in the same direction and indicated that there is linkage between changing costs and sale prices during the POR. The inventory records for HYSCO, Union and Dongbu demonstrate that the raw material and finished goods inventory are relatively low, indicating a minimal time lag between material purchase, production and sale dates. *See* Union, HYSCO and Dongbu Cost Calculation Memos. After reviewing this information and determining that there is a trend of sale prices and costs for the majority of the POR, we preliminarily determine that there is linkage between HYSCO, Union and Doungbu's changing costs and sales prices during the POR. *See, e.g., SSSS from Mexico* at Comment 6 and *SSPC from Belgium* at Comment 4.

Because we have found significant cost changes in COM as well as reasonable linkage between costs and sales prices, we have preliminarily determined that the use of quarterly cost leads to more appropriate comparisons in our antidumping duty calculation for HYSCO, Union and Dongbu.

*B. Calculation of Cost of Production*

Before making any comparisons to NV, we conducted a quarterly COP analysis of HYSCO, Union and Dongbu's sales pursuant to section 773(b)(3) of the Act to determine whether HYSCO, Union and Dongbu's comparison market sales were made at prices below the COP. For these preliminary results, the Department used the quarterly cost database submitted on August 18, 2010, for HYSCO, the quarterly cost database submitted on August 18, 2010, for Union, and the quarterly COP database submitted on August 3, 2010, for Dongbu.

For POSCO, we conducted an annual COP analysis pursuant to section 773(b)(1)(A) and (B) of the Act to determine whether POSCO's comparison market sales were made at prices below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing, in accordance with section 773(b)(3) of the Act.

Except as noted below, the Department relied on the COP data submitted by HYSCO, POSCO, Union and Dongbu and their supplemental section D questionnaire responses for the COP calculation. Union provided

[8] *See* Memorandum from Kristen Case to Neal M. Halper, Director of Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Union Steel Co., Ltd.,", dated September 7, 2010 ("Union Cost Calculation Memo"); Memorandum from Laurens Van Houten to Neal M. Halper, Director of Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Dongbu Steel," dated September 7, 2010 ("Dongbu Cost Calculation Memo"); and Memorandum from Ji Young Oh to Neal M. Halper, Director of Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Hyundai HYSCO" (HYSCO Cost Calculation Memo), dated September 7, 2010, the public versions of which are on file in the Central Record Unit, Room 7046, of the main Department building.

information in its questionnaire responses showing that it purchased substrate from affiliated parties. We consider substrate to be a major input and therefore have applied the major-input rule to value such purchases. Accordingly, pursuant to section 773(f)(3) of the Act and 19 CFR 351.407(b), we adjusted Union's substrate costs. Additionally, for the purposes of calculating Union's general and administrative (G&A) expense ratio, we excluded an item of non-operating income. *See* Union Cost Calculation Memo at 3.

For POSCO we excluded the gains related to the disposition and valuation of trading securities from the calculation of the G&A expense ratio because these gains are related to the company's investment activities. *See* Memorandum from Sheikh M. Hannan, Senior Accountant to Neal M. Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—POSCO," dated September 7, 2010 ("POSCO Cost Calculation Memo").

HYSCO provided information in its questionnaire responses showing that it purchased substrate from affiliated parties. We consider substrate to be a major input and therefore have applied the major-input rule to value such purchases. Accordingly, pursuant to section 773(f)(3) of the Act and 19 CFR 351.407(b), we adjusted HYSCO's substrate costs. Additionally, we adjusted the cost of goods sold denominator used in the G&A expense ratio and financial expense ratios to reflect the major input adjustment. *See* HYSCO Cost Calculation Memo.

*Application of Facts Available*

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) Withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

In the current review, multiple CONNUMs in HYSCO's submitted cost file contained negative values for certain cost fields. The Department requested on two different occasions that HYSCO provide an explanation for these negative values. *See* the Department's Section D supplemental questionnaire, dated May 19, 2010, and July 21, 2010, respectively. However, HYSCO's responses to date have not provided an adequate explanation of how negative POR production costs could be incurred to produce products. *See* HYSCO's section D supplemental questionnaire responses, dated June 23, 2010, and August 4, 2010, respectively. Accordingly, the Department determines that it lacks the information necessary to calculate accurate production costs for certain CONNUMs in these preliminary results. Therefore, we determine that application of partial facts available is warranted pursuant to sections 776(a)(1) and (2)(A) of the Act and have used the weighted-average value for each of those cost fields. *See* HYSCO Cost Calculation Memo. The Department intends to seek further explanation from HYSCO for the negative values in its cost file and will analyze any new data in the final results.

Furthermore, HYSCO did not provide hot-rolled coil cost for CONNUMs sold, but not produced, during the POR. For CONNUMs sold but not produced during the POR, we selected as partial facts available pursuant to sections 776(a)(1) and (2)(A) of the Act the next similar CONNUM, in accordance with the product characteristics as defined in the Department's questionnaire, to use as the surrogate to compute the costs for these CONNUMs. *See* HYSCO Cost Calculation Memo.

*C. Test of Comparison Market Sales Prices*

As required under section 773(b)(2) of the Act, we compared the quarterly or POR, as appropriate, weighted-average COP to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses.

*D. Results of the COP Test*

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the indexed POR or POR, as appropriate, weighted-average COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Therefore, for HYSCO, POSCO, Union and Dongbu, we disregarded below-cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* HYSCO, POSCO, Union and Dongbu Cost Calculation Memos.

**Calculation of NV Based on Comparison Market Prices**

For those comparison products for which there were sales at prices above the COP for HYSCO, POSCO, Union and Dongbu, we based NV on home market prices. In these preliminary results, we were able to match all U.S. sales to contemporaneous sales, made in the ordinary course of trade, of either an identical or a similar foreign like product, based on the matching characteristics identified in Appendix V of the original questionnaire. We calculated NV based on free on board (FOB) mill or delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length (*see* discussion below regarding these arm's-length sales). We made deductions, where appropriate, from the starting price for billing adjustments, discounts, rebates, and inland freight. Additionally, we added interest revenue. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. *See* Calculation Memos for the 16th Review.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale. These circumstances included differences in imputed credit expenses and other direct selling expenses, such as the expense related to bank charges and factoring. *Id.* We also made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

**Arm's-Length Sales**

Dongbu, Union, HYSCO and POSCO also reported that they made sales in the home market to affiliated parties. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.,* sales at arm's length. *See* 19 CFR 351.403(c).

To test whether these sales were made at arm's length, we compared the reported home market prices of sales to affiliated and unaffiliated customers with applied billing adjustments, including interest revenue and net of all movement charges, direct selling expenses, discounts, rebates, and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 71 FR 45017, 45020 (August 8, 2006) (unchanged in *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 72 FR 7011 (February 14, 2007)); 19 CFR 351.403(c). Conversely, where we found that the sales to an affiliated party did not pass the arm's-length test, then all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69187 (November 15, 2002); *see also* Calculation Memos for the 16th Review.

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP sales, to the extent possible. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT.

Pursuant to 19 CFR 351.412, to determine whether EP or CEP sales and NV sales were at different LOTs, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we will make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and the data available do not provide an appropriate basis to determine an LOT adjustment, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997).

We did not make an LOT adjustment under 19 CFR 351.412(e) because, there was only one home market LOT for each respondent and we were unable to identify a pattern of consistent price differences attributable to differences in LOTs. *See* 19 CFR 351.412(d). Under section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset for HYSCO, POSCO, Dongbu, and Union because the NV sales for each company are at a more advanced LOT than the LOT for the U.S. CEP sales.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* Calculation Memos for the 16th Review.

**Currency Conversion**

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

**Preliminary Results of the Review**

As a result of this review, we preliminarily find that the following weighted-average dumping margins exist:

| *Manufacturer/exporter* | *Percent margin* |
|---|---|
| HYSCO | *.22 |
| POSCO | *.04 |
| Union | 2.27 |
| Dongbu | 3.89 |
| Review-Specific Average Rate applicable to the following companies:[9] LG Chem, Haewon, Hausys, and Dongkuk | 3.08 |

*(De minimis).

**Public Comment**

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs are limited to issues raised in the case briefs and may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs in accordance with 19 CFR 351.310(d)(1). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

**Assessment Rate**

Upon completion of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific assessment rates for each respondent based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each

[9] This rate is based on the margins calculated for those companies that were selected for individual review, excluding *de minimis* margins or margins based entirely on adverse facts available.

importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondents subject to this review for which the reviewed companies did not know that the merchandise which it sold to an intermediary (*e.g.* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. For a full discussion of this clarification, see *id.*

**Cash Deposit Requirements**

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CORE from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 17.70 percent, the all-others rate established in the LTFV. *See Orders on Certain Steel from Korea.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010–22887 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Request for Comments on Vaccine Production and Additional Planning for Future Possible Pandemic Influenza

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The International Trade Administration invites submission of comments from the public and relevant industries on vaccine production and additional planning for future possible pandemic influenza.

**DATES:** Written comments must be submitted on or before October 1, 2010. Comments should be no more than 15 pages. Business-confidential information should be clearly identified as such.

**ADDRESSES:** You may submit comments by any of the following methods:

*E-mail:* *Vaccine.Comments@trade.gov.*

*Fax:* (202) 482–1975 (Attn.: Jane Earley).

*Mail or Hand Delivery/Courier:* Jane Earley, U.S. Department of Commerce, Office of Health and Consumer Goods, Room 1015, 1401 Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** For questions on the submission of comments, please contact Jane Earley by phone at (202) 482–2561 or Andrea Cornwell at (202) 482–0998.

**SUPPLEMENTARY INFORMATION:** Written comments are sought in light of the announced end of the H1N1 influenza pandemic (*see* World Health Organization announcement of August 10, 2010) and the need to plan for future pandemics. The facts and information obtained from written submissions will be used to inform the participation of the United States Department of Commerce in the interagency process to prepare for United States participation in international meetings and negotiations on pandemic planning, such as the meeting of the World Health Organization (WHO) Pandemic Influenza Preparedness Open Ended Working Group (PIP–OEWG) December 13–17, 2010.

The Department of Commerce invites comments from the pharmaceutical and medical technology industries and interested members of the public on a number of issues regarding vaccine production for pandemic influenza.

The Department of Commerce invites written submissions on the following topics:

1. *Manufacturers' experiences during the 2009 H1N1 pandemic.* What issues could have been better handled by industry, governments and the WHO? What is realistic and unrealistic to expect from governments, vaccine manufacturers, the WHO and others during a mild pandemic such as the 2009 H1N1 pandemic? How might expectations be different for a more severe pandemic?

2. *The emergency response process.* Based on the H1N1 pandemic experience, what changes in operational procedures or practices should be made to prepare for the next influenza pandemic? What additional consultation and decisional processes (within industry and among governments and the WHO) for pandemic preparedness are needed? What are the most critical deficiencies that need to be overcome in the present system to mount a more effective and robust response to pandemic influenza?

3. *Improving availability for developing countries.* How can we support and stimulate demand for seasonal flu vaccine in middle and lower income countries? Are there other

mechanisms to increase pandemic influenza vaccine manufacturing capacity or otherwise improve global availability of pandemic influenza vaccine? Have manufacturers discussed recent proposals by WHO member countries to implement "mandatory" mechanisms regarding participation in the Global Influenza Surveillance Network? What options to current proposals have been considered?

4. *Other matters that are related to the substance contained in 1–3, above.*

Please submit by October 1, 2010, a written submission of 15 pages or less with facts and information on the issues described above. Comments should be submitted electronically to *Vaccine.Comments@trade.gov*. Business-confidential information should be clearly identified.

Upon receipt of the written submission, representatives from the Department of Commerce and other federal agencies and departments will consider the information. In doing so, entities submitting the information may be contacted for further information or explanation and, in some cases, meetings with individual submitters may be requested.

Dated: September 8, 2010.

**Skip Jones,**

*Deputy Assistant Secretary, Trade Agreements and Compliance, Market Access and Compliance, International Trade Administration, U.S. Department of Commerce.*

[FR Doc. 2010–22881 Filed 9–13–10; 8:45 am]

**BILLING CODE 3510–DA–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 10–C0005]**

### Pro-Pac Distributing Corp., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Pro-Pac Distributing Corp., containing a civil penalty of $125,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by September 29, 2010.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 10–C0005, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Yearout, Trial Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7733.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: September 8, 2010.

**Todd A. Stevenson,**

*Secretary.*

### UNITED STATES OF AMERICA CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 10–C0005]**

**In the Matter of: Pro-Pac Distributing Corp.**

**Settlement Agreement**

1. In accordance with 16 CFR 1118.20, Pro-Pac Distributing Corporation ("Pro-Pac") and the staff ("Staff") of the United States Consumer Product Safety Commission ("Commission") enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order ("Order") settle the Staff's allegations set forth below.

**Parties**

2. The Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 ("CPSA").

3. Pro-Pac is a corporation organized and existing under the laws of California, with its principal offices located in Gardena, California. At all times relevant hereto, Pro-Pac sold apparel.

**Staff Allegations**

4. In November of 2008, Pro-Pac imported and further distributed in commerce, through sale and/or holding for sale, children's hooded pullover and zipper sweatshirts with drawstrings at the neck, in sizes Youth S–L (collectively, "Sweatshirts").

5. Pro-Pac sold Sweatshirts to retailers.

6. The Sweatshirts are "consumer product[s]," and, at all times relevant hereto, Pro-Pac was a "manufacturer" of those consumer products, which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. 2052(a)(5), (8), and (11).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear ("Guidelines") to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard (ASTM F1816–97) that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act ("FHSA") section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Pro-Pac's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

11. On July 15, 2009, the Commission announced Pro-Pac's recall of the Sweatshirts.

12. Pro-Pac had presumed and actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Pro-Pac had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3)

and (4), 15 U.S.C. 2064(b)(3) and (4), required Pro-Pac to immediately inform the Commission of the defect and risk.

13. Pro-Pac knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Pro-Pac to civil penalties.

**Pro-Pac's Response**

14. Pro-Pac denies the Staff's allegations above that Pro-Pac knowingly violated the CPSA.

**Agreement of the Parties**

15. Under the CPSA, the Commission has jurisdiction over this matter and over Pro-Pac.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Pro-Pac, or a determination by the Commission, that Pro-Pac knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Pro-Pac shall pay a civil penalty in the amount of one hundred twenty-five thousand dollars ($125,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury.

18. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Pro-Pac knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Pro-Pac failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Pro-Pac and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Pro-Pac and each of its successors and assigns to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Pro-Pac agree that severing the provision materially affects the purpose of the Agreement and the Order.

Pro-Pac Distributing Corp.
Dated: *August 11, 2010.* By:

Young-Geun Lee
*President and Owner, Pro-Pac Distributing Corp., 204 W. Rosecrans Avenue, Gardena, CA 90248.*
Dated: *August 15, 2010.* By:

Simon Langer,
*Law Offices of David Marh & Associates, 3325 Wilshire Blvd., Suite 1350, Los Angeles, CA 90010, Counsel for Pro-Pac Distributing Corp.*
U.S. Consumer Product Safety,
*Commission Staff.*
Cheryl A. Falvey,
*General Counsel.*
Ronald G. Yelenik,
*Assistant General Counsel, Office of the General Counsel.*
Dated: *August 24, 2010.*
Jason E. Yearout,
*Trial Attorney, Division of Compliance, Office of the General Counsel.*

**UNITED STATES OF AMERICA CONSUMER PRODUCT SAFETY COMMISSION**

[CPSC Docket No. 10–C0005]

In the Matter of: Pro-Pac Distributing Corp.

**Order**

Upon consideration of the Settlement Agreement entered into between Pro-Pac Distributing Corp. ("Pro-Pac") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Pro-Pac, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Pro-Pac shall pay a civil penalty in the amount of one hundred twenty-five thousand dollars ($125,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Pro-Pac to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Pro-Pac at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 7th day of September, 2010.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission*

[FR Doc. 2010–22779 Filed 9–13–10; 8:45 am]
**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Strategic Environmental Research and Development Program, Scientific Advisory Board

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on October 19–21, 2010, is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds in excess of $1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

**DATES:** The meeting will be held on Tuesday, October 19 (from 9 a.m. to 5

p.m.), Wednesday, October 20 (from 9 a.m. to 4 p.m.) and Thursday, October 21, 2010 (from 8:30 a.m. to 12:30 p.m.).

**ADDRESSES:** The meeting will be held at the SERDP Office Conference Center, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Bunger, SERDP Office, 901 North Stuart Street, Suite 303, Arlington, VA, or by telephone at (703) 696–2126.

Dated: September 8, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–22800 Filed 9–13–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Notice of Submission for OMB Review

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Interested persons are invited to submit comments on or before October 14, 2010.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 3, 2010.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* Reinstatement.

*Title of Collection:* National Household Education Survey (NHES 2011/2012) Field Test.

*OMB Control Number:* 1850–0768.

*Frequency of Responses:* Once.

*Affected Public:* Individuals or households.

*Total Estimated Number of Annual Responses:* 40,905.

*Total Estimated Annual Burden Hours:* 5,535.

*Abstract:* The National Household Education Surveys Program (NHES) collects data directly from households on early childhood care and education, children's readiness for school, parent perceptions of school safety and discipline, before- and after-school activities of school-age children, participation in adult and continuing education, parent involvement in education, school choice, homeschooling, and civic involvement. NHES surveys have been conducted approximately every other year from 1991 through 2007 using random digit dial (RDD) sampling and telephone data collection from landline telephones only. Each survey collection included the administration of household screening questions (screener) and two or three topical surveys. Like virtually all RDD surveys, NHES Screener response rates have declined (from above 80% in early 1990s to 53% in 2007) and the decline in the percentage of households without landline telephones (from 93% in early 2004 to about 75% in 2009 mostly due to conversion to cellular-only coverage) raises issues about population coverage. To address these issues, the NHES is transitioning from a Random Digit Dial (RDD) interviewer administered study to an Address Based Sample, self-administered study. A feasibility test of the methodology was conducted successfully in 2009. In 2011, the National Center for Education Statistics (NCES) will conduct a large scale pilot test to further refine the methodology. A number of interventions to improve response rates and data quality will be tested in 2011. In 2012, NCES will conduct the first full-scale production data collection utilizing the new design. The 2011 test and 2012 data collections will utilize the Parent and Family Involvement in Education and Early Childhood Program Participation modules.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4351. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–22787 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF EDUCATION

### Notice of Submission for OMB Review

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Interested persons are invited to submit comments on or before October 14, 2010.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to

*oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 8, 2010.

**James Hyler,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Office of Elementary and Secondary Education

*Type of Review:* Revision of a currently approved collection.

*Title of Collection:* Consolidated State Performance Report (Part I and Part II).

*OMB Control Number:* 1810–0614.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Annually.

*Affected Public:* State, Local, or Tribal Government, State Educational Agencies, Local Educational Agencies.

*Total Estimated Number of Annual Responses:* 14,653.

*Total Estimated Annual Burden Hours:* 11,864.

*Abstract:* The Consolidated State Performance Report (CSPR) is the required annual reporting tool for each State, Bureau of Indian Education, District of Columbia, and Puerto Rico as authorized under Section 9303 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB).

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4346. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–22892 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Comment Request.

**SUMMARY:** The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 15, 2010.

**ADDRESSES:** Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department?; (2) will this information be processed and used in a timely manner?; (3) is the estimate of burden accurate?; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected?; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology?

Dated: September 7, 2010.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Institute of Education Sciences

*Type of Review:* New.

*Title of Collection:* Integrated Evaluation of ARRA Funding, Implementation and Outcomes.

*OMB Control Number:* 1850–NEW.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Once.

*Affected Public:* State, Local, or Tribal Government.

*Total Estimated Number of Annual Responses:* 5,551.

*Total Estimated Number of Annual Burden Hours:* 1,509.

*Abstract:* On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) into law (Pub. L. 111–50). ARRA supports investments in innovative strategies that are intended to lead to improved results for students, long-term gains in school and local education agency (LEA) capacity for success, and increased productivity and effectiveness.

This evaluation will focus on answering four sets of research questions:

- *Money:* Which states/districts/schools get which program funds, when, and how much? What do they spend it on? How much overlap is there across

ARRA funding streams in terms of who receives the funding or what grantees do with it?

• *Strategies:* What efforts and activities are underway as a result of each of the ARRA programs and overall? What state policies are changing or being enacted? What specific interventions are districts and schools implementing? How do the strategies line up with the four assurances or with the specific strategies promoted by the different programs?

• *Implementation Process:* How much coordination do states and districts report in the decision-making and planning for implementation across the various streams of funds? Are districts that receive funds directly (e.g., thru I3) employing strategies that are consistent with their state's policies and plans (e.g., under Race to the Top)? On an ongoing basis, what challenges do grantees face in enacting their plans and what successes have they had?

• *Outcomes:* Is receiving more ARRA funds or certain types of funds associated with improvement in student outcomes or other key measures (e.g., more equitable distribution of teacher quality)?

The integrated evaluation will draw on existing data, including ED data collections, ED ARRA program files, ARRA required reporting, and databases of achievement and other outcomes. The evaluation will also collect new information through surveys of (1) The 50 states and the District of Columbia, (2) a nationally representative sample of school districts, and (3) a nationally representative sample of schools within the sampled school districts. Surveys are planned for spring 2011, spring 2012, and spring 2013. Subsamples of school districts will also be drawn to receive a smaller set of questions (polls); these polls will be administered twice between 2011 and 2013.

A report will be prepared in the first year of the evaluation to describe the distribution of funding. A report and state tabulations will be prepared after each annual survey. The first report, based on the 2011 surveys, will focus on early ARRA implementation and strategies. The second report, based on the 2012 surveys, will expand upon strategies implemented under ARRA. The final report will draw upon existing data on outcomes as well as data from the 2013 surveys.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4385. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please include complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–22781 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 15, 2010.

**ADDRESSES:** Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department (2) Will this information be processed and used in a timely manner (3) Is the estimate of burden accurate (4) How might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) How might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 8, 2010.

**James Hyler,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Extension of a currently approved collection.

*Title of Collection:* Lender's Request for Payment of Interest and Special Allowance—LaRS.

*OMB Control Number:* 1845–0013.

*Agency Form Number(s):* ED Form 799.

*Frequency of Responses:* Quarterly.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions.

*Total Estimated Number of Annual Responses:* 11,600.

*Total Estimated Number of Annual Burden Hours:* 28,275.

*Abstract:* The Lender's Request for Payment of Interest and Special Allowance—LaRS (ED Form 799) is used by approximately 2,900 lenders participating in the Title IV, Part B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans; and to capture quarterly data from lenders' loan portfolio for financial and budgetary projections.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4366. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information

collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–22911 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 15, 2010.

**ADDRESSES:** Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 8, 2010.

**James Hyler,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Extension of a currently approved collection.

*Title of Collection:* **Federal Register** Notice Inviting Applications for the Participation in the Quality Assurance (QA) Program.

*OMB Control Number:* 1845–0055.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* One Time.

*Affected Public:* Federal Government.

*Total Estimated Number of Annual Responses:* 125.

*Total Estimated Number of Annual Burden Hours:* 125.

*Abstract:* The Secretary will invite institutions of higher education to send a letter of application to participate in the Department of Education's Quality Assurance (QA) Program. This Program is intended to allow and encourage participating institutions to develop and implement their own comprehensive programs to verify student financial aid application data.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4384. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–22910 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Submission for OMB Review

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Interested persons are invited to submit comments on or before October 14, 2010.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 9, 2010.

**James Hyler,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Office of Elementary and Secondary Education

*Type of Review:* Revision.

*Title of Collection:* Migrant High School Equivalency Program Annual Performance Report.

*OMB Control Number:* 1810–0684.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Annually.

*Affected Public:* Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies, Local Educational Agencies.

*Total Estimated Number of Annual Responses:* 42.

*Total Estimated Annual Burden Hours:* 1,344.

*Abstract:* The Office of Migrant Education is collecting information for the High School Equivalency Program Annual Performance Report in compliance with Higher Education Act of 1965, as amended, Title IV, Sec. 418A; 20 U.S.C. 1070d–2 (special programs for students whose families are engaged in migrant and seasonal farm work), the Government Performance Results Act (GPRA) of 1993, Section 4 (1115), and the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.253. EDGAR states that recipients of multi-year discretionary grants must submit an Annual Performance Report demonstrating that substantial progress has been made towards meeting the approved objectives of the project. In addition, discretionary grantees are required to report on their progress toward meeting the performance measures established for the Department of Education grant program. The Office of Migrant Education requests a revision of a currently approved collection to continue the use of a customized Annual Performance Report that goes beyond the Department of Education generic form number 524B Annual Performance Report to facilitate the collection of more standardized and comprehensive data to inform GPRA, to improve the overall quality of data collected, and to increase the quality of data that can be used to inform policy decisions.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4298. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–22896 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 15, 2010.

**ADDRESSES:** Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 8, 2010.

**James Hyler,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Revision of a currently approved collection.

*Title of Collection:* Federal Direct Consolidation Loan Program Application Documents (KA).

*OMB Control Number:* 1845–0053.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* On occasion.

*Affected Public:* Individuals or household; private sector.

*Total Estimated Number of Annual Responses:* 1,992,600.

*Total Estimated Number of Annual Burden Hours:* 717,582.

*Abstract:* The Federal Direct Consolidation Loan Application and Promissory Note serves as the means by which a borrower applies for a Direct Consolidation Loan and promises to repay the loan. Related documents included with this collection are (1) Additional Loan Listing Sheet (provides additional space for a borrower to list loans that he or she wishes to consolidate, if there is insufficient space on the Application and Promissory Note), (2) Request to Add Loans (serves as the means by which a borrower may add other loans to an existing Direct Consolidation Loan within a specified time period); and (3) Loan Verification Certificate (serves as the means by which the U.S. Department of Education obtains the information needed to pay off the holders of the loans that the borrower wants to consolidate).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4387. When you access the information collection, click on "Download Attachments" to view.

Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–22894 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Final Extension of Project Period and Waiver for the State and Federal Policy Forum

**AGENCY:** Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of final extension of project period and waiver for the State and Federal Policy Forum for Program Improvement Center (CFDA No. 84.326F).

**SUMMARY:** The Secretary issues this notice to waive the requirements in the Education Department General Administrative Regulations, in 34 CFR 75.250 and 75.261(a) and (c), respectively, that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. The extension of project period and waiver enable the currently funded State and Federal Policy Forum for Program Improvement Center to receive funding from October 1, 2010 through September 30, 2011.

**DATES:** The extension of project period and waiver are effective September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** David Egnor, U.S. Department of Education, 550 12th St., SW., Room 4054, Potomac Center Plaza, Washington, DC 20202–2641. Telephone: (202) 245–7334.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Department published a notice in the **Federal Register** (75 FR 44231) on July 28, 2010, proposing an extension of project period and a waiver in order to—

(1) Enable the Secretary to provide additional funds to the currently funded State and Federal Policy Forum for Program Improvement Center for an additional 12-month period, from October 1, 2010 through September 30, 2011; and

(2) Request comments on the proposed extension of project period and waiver.

There are no substantive differences between the notice of proposed extension of project period and waiver and this notice of final extension of project period and waiver.

**Public Comment**

We invited comments on the proposed extension of project period and waiver in the notice of proposed extension of project period and waiver. Seven parties submitted comments in agreement with the proposal to extend the grant period of the current grantee. We did not receive any comments opposing the proposed extension of project period and waiver. Generally, we do not address technical and other minor changes, as well as suggested changes the law does not authorize us to make. Moreover, we do not address comments that do not express views on the substance of the notice of proposed extension of project period and waiver.

**Waiver of Delayed Effective Date**

The Administrative Procedure Act requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). No comments were received during the 15-day public comment period opposing the notice of proposed extension of project period and waiver, and we have not made any substantive changes to the extension and waiver. The Secretary has determined therefore that, to ensure a timely continuation grant to the entity affected, a delayed effective date is not required.

**Background**

On March 3, 2005, the Department published a notice in the **Federal Register** (70 FR 10374), inviting applications for new awards for fiscal year (FY) 2005 under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program, authorized under section 663 of the Individuals with Disabilities Education Act (IDEA), to support a State and Federal Policy Forum for Program Improvement Center (Project Forum). Based on that notice, the Department made one award for a period of 60 months to the National Association of State Directors of Special Education to carry out Project Forum.

The purpose of Project Forum is to provide States, local educational agencies (LEAs), and Federal decision makers responsible for the implementation of the IDEA with access to valid statistics, research findings, policy analyses, and current information on trends in the provision of special education and related services and early intervention services. Specifically, Project Forum assists States and LEAs with the process of planning systemic changes that will promote improved early intervention, education, and transitional results for children with disabilities. Project Forum also provides the Office of Special Education Programs (OSEP) with a mechanism and resources for analyzing policies and emerging issues that are of significant national concern.

Project Forum's current project period is scheduled to end on September 30, 2010. We do not believe it would be in the public interest to hold new competitions under the TA&D program until the Department has considered changes being made to the Elementary and Secondary Education Act of 1965, as amended (ESEA), during the process of reauthorizing that law and the Department has developed a coordinated strategy for the provision of technical assistance that is designed to help States, LEAs, and schools effectively implement key provisions of the ESEA and IDEA and improve educational results for all students. We also have concluded that it would be contrary to the public interest to have a lapse in the provision of technical assistance provided under the TA&D program pending the reauthorization of ESEA. For these reasons, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(a) and (c), which limit the extension of a project period if the extension involves the obligation of additional Federal funds, and issues a continuation award in the amount of $450,000 to the National Association of State Directors of Special Education (H326F050001) for an additional twelve-month period.

Waiving these regulations and issuing this continuation award ensure that continued technical assistance is available to assist Federal decision makers, States, and LEAs with systemic changes that will promote improved early intervention, education, and transitional results for children with disabilities, as the Department works on reauthorization of the ESEA and designs IDEA technical assistance competitions

that are coordinated and aligned with the Department's technical assistance priorities.

During the next fiscal year, Project Forum will conduct the following activities:

(a) Identify, through contact with experts, research reviews, regular communication with State and local policy officials, and other types of needs assessments, the information that programs need to improve, both at the national, State, and local levels;

(b) Collect, organize, synthesize, interpret, and integrate information needed for program improvement using a variety of methods and formats such as surveys, interviews, brief case examinations, and meetings among special education administrators, outside experts, representatives of students with disabilities and their families, and others;

(c) Analyze emerging policy or program issues regarding the administration of special education, early intervention, and related services at the Federal, State, and local levels, and review, plan, and provide leadership in recommending multi-level actions that respond to emerging issues;

(d) Communicate, collaborate, and form partnerships as appropriate and as directed by OSEP, with technical assistance providers at the national and regional levels, including those that are part of the OSEP-supported special education technical assistance and dissemination network;

(e) Communicate regularly with OSEP to provide and receive information that may assist OSEP in improving its efficiency and effectiveness in administering IDEA;

(f) As a result of the activities associated with paragraphs (a) through (e), at a minimum—

(1) Complete three in-depth policy analyses;

(2) Prepare ten policy syntheses; and

(3) Convene one policy forum and write a proceedings document;

(g) Disseminate documents noted under paragraph (f) to a wide audience, including State and local directors of special education; and

(h) Maintain the project Web site.

**Regulatory Flexibility Act Certification**

The Secretary certifies that the extension of project period and waiver do not have a significant economic impact on a substantial number of small entities. The only entity affected is Project Forum.

**Paperwork Reduction Act of 1995**

The extension of project period and waiver do not contain any information collection requirements.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**Electronic Access to This Document**

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 7, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010–22880 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education; Notice of Final Extension of Project Period and Waiver for the National Center on Educational Outcomes at the University of Minnesota (CFDA No. 84.326G)

**SUMMARY:** The Secretary issues this notice to waive the requirements in the Education Department General Administrative Regulations, in 34 CFR 75.250 and 75.261(a) and (c), respectively, that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. The extension of project period and waiver enable the currently funded National Center on Educational Outcomes at the University of Minnesota to receive funding from October 1, 2010 through September 30, 2011.

**DATES:** The extension of project period and waiver are effective September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** David Malouf, U.S. Department of Education, 550 12th St., SW., Room 4114, Potomac Center Plaza, Washington, DC 20202–2641; Telephone: (202) 245–6253.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Department published a notice in the **Federal Register** (75 FR 44234) on July 28, 2010, proposing an extension of project period and a waiver in order to—

(1) Enable the Secretary to provide additional funds to the currently funded National Center on Educational Outcomes at the University of Minnesota for an additional 12-month period, from October 1, 2010 through September 30, 2011; and

(2) Request comments on the proposed extension of project period and waiver.

There are no substantive differences between the notice of proposed extension of project period and waiver and this notice of final extension of project period and waiver.

**Public Comment**

We invited comments on the proposed extension of project period and waiver in the notice of proposed extension of project period and waiver. We did not receive any comments.

**Waiver of Delayed Effective Date**

The Administrative Procedure Act requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). No comments were received during the 15-day public comment period on the notice of proposed extension of project period and waiver and we have not made any substantive changes to the extension and waiver. The Secretary has determined therefore that, to ensure a timely continuation grant to the entity affected, a delayed effective date is not required.

**Background**

On August 8, 2005, the Department published a notice in the **Federal**

**Register** (70 FR 45712), inviting applications for new awards for fiscal year (FY) 2005 under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program (TA&D), authorized under section 663 of the Individuals with Disabilities Act (IDEA), to support a National Technical Assistance Center on Assessment for Children with Disabilities. Based on that notice, the Department made one award for a period of 60 months to the University of Minnesota, National Center on Educational Outcomes (NCEO). Under this award, the Office of Special Education Programs (OSEP) funds NCEO to address national, State, and local assessment issues related to students with disabilities. NCEO also assists OSEP with analyzing State assessment data submitted in the State Performance Plan/Annual Performance Reports (SPP/APR) required under the IDEA.

NCEO's current project period is scheduled to end on September 30, 2010. We do not believe it would be in the public interest to hold new competitions under the TA&D program until the Department has considered changes being made to the Elementary and Secondary Education Act of 1965, as amended (ESEA), during the process of reauthorizing that law and the Department has developed a coordinated strategy for the provision of technical assistance that is designed to help States, local educational agencies (LEAs), and schools effectively implement key provisions of the ESEA and IDEA and improve educational results for all students. We also have concluded that it would be contrary to the public interest to have a lapse in the provision of technical assistance provided under the TA&D program pending the reauthorization of ESEA. For these reasons, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(a) and (c), which limit the extension of a project period if the extension involves the obligation of additional Federal funds, and issues a continuation award in the amount of $1,000,000 to the University of Minnesota (H326G050007) for an additional twelve-month period.

Waiving these regulations and issuing this continuation award ensure that continued technical assistance is available to assist States with developing and implementing appropriate assessments of students with disabilities, as well as emerging issues related to the inclusion of children with disabilities in assessments, as the Department works on reauthorization of the ESEA and designs IDEA technical assistance competitions that are coordinated and aligned with the Department's technical assistance priorities.

During the next fiscal year, NCEO will (1) Provide, upon request, technical assistance to States regarding the inclusion of students with disabilities as they develop new academic assessments, including assessments that consortia of States may develop under the Race to the Top Assessment Program, and assessments associated with other Federal laws (e.g., the ESEA and IDEA); (2) develop and implement national and regional activities to ensure that students with disabilities are included in and benefit from emerging approaches to assessment (e.g., supporting communities of practice and convening national forums); (3) continue, update, and expand analyses of State SPP/APR assessment data; (4) collect, analyze, synthesize, and disseminate relevant information related to the assessment of students with disabilities, as appropriate; and (5) serve as a national resource for policymakers, administrators, teachers, advocates, and parents on the assessment of students with disabilities.

**Regulatory Flexibility Act Certification**

The Secretary certifies that the extension of project period and waiver do not have a significant economic impact on a substantial number of small entities. The only entity affected is NCEO.

**Paperwork Reduction Act of 1995**

The extension of project period and waiver do not contain any information collection requirements.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 7, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010–22904 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education; Notice of Final Extension of Project Period and Waiver for the National Secondary Transition Technical Assistance Center (CFDA No. 84.326J)

**SUMMARY:** The Secretary issues this notice to waive the requirements in the Education Department General Administrative Regulations, in 34 CFR 75.250 and 75.261(a) and (c), respectively, that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. The extension of project period and waiver enable the currently funded National Secondary Transition Technical Assistance Center to receive funding from December 31, 2010 through December 31, 2011.

**DATES:** The extension of project period and waiver are effective October 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Michael Slade, U.S. Department of Education, 550 12th St., SW., room 4083, Potomac Center Plaza, Washington, DC 20202–2641. Telephone: (202) 245–7527.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Department published a notice in the **Federal Register** (75 FR 44233) on July 28, 2010, proposing an extension of

project period and a waiver in order to—

(1) Enable the Secretary to provide additional funds to the currently funded National Secondary Transition Technical Assistance Center for an additional 12-month period, from December 31, 2010 through December 31, 2011; and

(2) Request comments on the proposed extension of project period and waiver.

There are no substantive differences between the notice of proposed extension of project period and waiver and this notice of final extension of project period and waiver.

**Public Comment**

We invited comments on the proposed extension of project period and waiver in the notice of proposed extension of project period and waiver. Five parties submitted comments in agreement with the proposal to extend the grant period of the current grantee. We did not receive any comments opposing the proposed extension of project period and waiver. Generally, we do not address technical and other minor changes, as well as suggested changes the law does not authorize us to make. Moreover, we do not address comments that do not express views on the substance of the notice of proposed extension of project period and waiver.

**Background**

On March 8, 2005, the Department published a notice in the **Federal Register** (70 FR 11214), inviting applications for new awards for fiscal year (FY) 2005 under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program, authorized under section 663 of the Individuals with Disabilities Education Act (IDEA), to support a Secondary Transition Technical Assistance Center. Based on that notice, the Department made one award for a period of 60 months to the University of North Carolina at Charlotte to carry out the National Secondary Transition Technical Assistance Center (NSTTAC).

Currently, the Office of Special Education Programs (OSEP) funds NSTTAC to support the improvement of transition planning, services, and outcomes for youth with disabilities by disseminating information and providing technical assistance (TA) on evidence-based practices with an emphasis on building and sustaining State-level infrastructures of support and building district-level demonstrations of effective transition methods. NSTTAC has demonstrated significant progress in disseminating information on evidence-based practices and providing TA to States and local educational agencies (LEAs) to advance implementation of effective transition planning and services.

NSTTAC's current project period is scheduled to end on December 31, 2010. We do not believe it would be in the public interest to hold new competitions under the TA&D program until the Department has considered changes being made to the Elementary and Secondary Education Act of 1965, as amended (ESEA), during the process of reauthorizing that law and the Department has developed a coordinated strategy for the provision of technical assistance that is designed to help States, LEAs, and schools effectively implement key provisions of the ESEA and IDEA and improve educational results for all students. We also have concluded that it would be contrary to the public interest to have a lapse in the provision of technical assistance provided under the TA&D program pending the reauthorization of the ESEA. For these reasons, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(a) and (c), which limit the extension of a project period if the extension involves the obligation of additional Federal funds, and issues a continuation award in the amount of $1,100,000 to the University of North Carolina at Charlotte (H326J050004) for an additional twelve-month period.

Waiving these regulations and issuing this continuation award ensure that continued technical assistance is available to assist States and LEAs with effective transition planning and services, as the Department works on reauthorization of the ESEA and designs TA&D competitions that are coordinated and aligned with the Department's technical assistance priorities.

During the next fiscal year, NSTTAC will continue, update, and expand its work to (1) Identify evidence-based practices that provide a foundation for States to improve transition planning and services that enhance post-school outcomes; (2) disseminate information to State personnel, practitioners, researchers, parents, and students regarding effective transition planning and services that improve post-school outcomes; (3) build the capacity of States and LEAs to implement effective transition planning and services that improve post-school outcomes; and (4) assist State educational agencies with collecting data on IDEA Part B State Performance Plan/Annual Performance Report Indicator 13, which assesses States' implementation of comprehensive transition planning and services, and using these data to guide improvement activities.

**Regulatory Flexibility Act Certification**

The Secretary certifies that the extension of project period and waiver do not have a significant economic impact on a substantial number of small entities. The only entity affected is NSTTAC.

**Paperwork Reduction Act of 1995**

The extension of project period and waiver do not contain any information collection requirements.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

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Dated: September 7, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010–22903 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; List of Correspondence

**AGENCY:** Department of Education.

**ACTION:** List of Correspondence from January 1, 2010 through March 31, 2010.

**SUMMARY:** The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act (IDEA). Under section 607(f) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of the IDEA or the regulations that implement the IDEA.

**FOR FURTHER INFORMATION CONTACT:** Laura Duos or Mary Louise Dirrigl. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this notice in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** The following list identifies correspondence from the Department issued from January 1, 2010 through March 31, 2010. Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by each letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

**Part B—Assistance for Education of All Children With Disabilities**

*Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations*

Topic Addressed: State Level Activities

○ Letter dated January 7, 2010 to Arizona Department of Education Deputy Associate Superintendent for Exceptional Student Services Collette E. Chapman, about (1) a State's billing for indirect costs for IDEA American Recovery and Reinvestment Act of 2009 (ARRA) funds retained at the State level and (2) adjustments to the statutory caps on State administration under the IDEA and Title I of the Elementary and Secondary Education Act of 1965, as amended, that help defray the costs of data collection associated with the ARRA.

*Section 612—State Eligibility*

Topic Addressed: Personnel Qualifications

○ Letter dated January 27, 2010 to New Jersey Speech-Language-Hearing Association School Affairs Chair Sue A. Goldman, clarifying that the IDEA does not permit States to obtain a waiver of State-approved certification requirements for related services providers who currently do not meet State certification requirements but does permit States to use alternate certification routes for such personnel.

Topic Addressed: Maintenance of State Financial Support

○ Letter dated February 12, 2010 to the American Association of School Administrators Deputy Executive Director Bruce Hunter, clarifying that State Fiscal Stabilization Funds under the ARRA may be used, under certain circumstances, to meet Part B of the IDEA State and local maintenance of effort requirements.

*Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements*

Topic Addressed: Evaluation Procedures

○ Letter dated January 13, 2010 to an individual (personally identifiable information redacted) regarding students with high cognition who also require special education and related services under the IDEA.

Topic Addressed: Individualized Education Programs (IEPs)

○ Letter dated January 7, 2010 to Texas attorney Nona Matthews, regarding the requirement to include in a child's IEP information on the frequency, duration, and location of the special education and related services provided to the child.

○ Letter dated January 7, 2010 to educational advocate Dorothy M. Richards, regarding the role of a public agency representative on the IEP Team.

○ Letter dated February 12, 2010 to Alabama attorney James Irby, regarding how an IEP Team could ensure that students with disabilities who need additional reading instruction are not prevented from participating in mandatory physical education instruction.

*Section 615—Procedural Safeguards*

Topic Addressed: Independent Educational Evaluations

○ Letter dated January 4, 2010 to individuals (personally identifiable information redacted) regarding whether a public agency's procedures relating to a parent's right to obtain an independent educational evaluation at public expense are consistent with the IDEA.

Topic Addressed: Impartial Due Process Hearing

○ Letter dated February 2, 2010 to Miami-Dade County Public Schools Assistant Attorney Mary C. Lawson, clarifying that a local educational agency may not bring an attorney to a resolution meeting if a parent brings an advocate or other qualified representative to the meeting, in lieu of an attorney.

○ Letter dated February 12, 2010 to Alabama attorney James Irby, regarding parent participation at resolution meetings.

**Part C—Infants and Toddlers With Disabilities**

*Section 636—Individualized Family Service Plan*

○ Letter dated February 12, 2010 to Florida Department of Health Early Steps Bureau Chief Janice M. Kane, clarifying the relationship of peer-reviewed research to the frequency and intensity of the early intervention services to be included in an infant's or toddler's individualized family service plan.

*Other Letters That Do Not Interpret Idea But May Be of Interest to Readers*

Topic Addressed: Seclusion and Restraints

○ Letter dated January 26, 2010 to National Leadership Consortium on Developmental Disabilities representative Nancy R. Weiss, regarding the use of seclusion and restraints and other aversive behavioral interventions in schools.

*Electronic Access to This Document*

You can view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable

Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children With Disabilities)

Dated: September 7, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010–22882 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students With Disabilities

**AGENCY:** U.S. Department of Education, Office of Special Education and Rehabilitative Services, Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities.

**ACTION:** Notice of a Partially Closed Meeting.

**SUMMARY:** The notice sets forth the schedule and agenda of the meeting of the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

**DATES:** September 27–28, 2010.

**TIME:** September 27, 2010: 8 a.m.–4:30 p.m. The Commission will meet in closed session between the hours of 1:30 p.m. and 3 p.m.; September 28, 2010: 8 a.m.–4 p.m.

**ADDRESSES:** The Commission will meet at the Office of Special Education and Rehabilitative Services, United States Department of Education, Potomac Center Plaza, 10th Floor Auditorium, 550 12th Street, SW., Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Shook, Program Specialist, Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202; telephone: (202) 245–7642, fax: 202–245–7638.

**SUPPLEMENTARY INFORMATION:** The Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities (the Commission) is established under Section 772 of the Higher Education Opportunity Act, Public Law 110–315, dated August 14, 2008. The Commission is established to (a) conduct a comprehensive study, which will—(I) Assess the barriers and systemic issues that may affect, and technical solutions available that may improve, the timely delivery and quality of accessible instructional materials for postsecondary students with print disabilities, as well as the effective use of such materials by faculty and staff; and (II) make recommendations related to the development of a comprehensive approach to improve the opportunities for postsecondary students with print disabilities to access instructional materials in specialized formats in a time frame comparable to the availability of instructional materials for postsecondary nondisabled students.

In making recommendations for the study, the Commission shall consider—(I) How students with print disabilities may obtain instructional materials in accessible formats within a time frame comparable to the availability of instructional materials for nondisabled students; and to the maximum extent practicable, at costs comparable to the costs of such materials for nondisabled students; (II) the feasibility and technical parameters of establishing standardized electronic file formats, such as the National Instructional Materials Accessibility Standard as defined in Section 674(e)(3) of the Individuals with Disabilities Education Act, to be provided by publishers of instructional materials to producers of materials in specialized formats, institutions of higher education, and eligible students; (III) the feasibility of establishing a national clearinghouse, repository, or file-sharing network for electronic files in specialized formats and files used in producing instructional materials in specialized formats, and a list of possible entities qualified to administer such clearinghouse, repository, or network; (IV) the feasibility of establishing market-based solutions involving collaborations among publishers of instructional materials, producers of materials in specialized formats, and institutions of higher education; (V) solutions utilizing universal design; and (VI) solutions for low-incidence, high-cost requests for instructional materials in specialized formats.

The purpose of the meeting is to swear in the members of the Commission, provide the members with ethics and other administrative training, and elect a Chair and Vice-Chair of the Commission. In addition, the Commission, at the direction of the Chair and Vice-Chair, will meet to discuss their plans to complete the study within the one-year framework provided by Congress. On September 27, the Commission will meet in closed session from 1:30 p.m. to 3 p.m. to discuss the qualifications of members to serve as Chair and Vice-Chair. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C. This notice is appearing in the **Federal Register** less than 15 days before the meeting due to efforts to schedule the meeting before the end of the fiscal year.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Commission proceedings and are available for public inspection at the Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202, Monday–Friday during the hours of 8 a.m. to 4:30 p.m.

**Additional Information**

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Elizabeth Shook at (202) 245–7642, no later than September 20, 2010. We will make every attempt to meet requests for accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

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must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC, area at 202–512–0000.

Dated: September 9, 2010.

**Alexa Posny,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 2010–22883 Filed 9–13–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Sunshine Act Meeting Notice

September 9, 2010.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** September 16, 2010, 10 a.m.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note**—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

962ND—MEETING

September 16, 2010, 10 a.m.

| Item No. | Docket No. | Company |
|---|---|---|
| | **Administrative** | |
| A–1 | AD02–1–000 | Agency Administrative Matters. |
| A–2 | AD02–7–000 | Customer Matters, Reliability, Security and Market Operations. |
| | **Electric** | |
| E–1 | EL10–29–000 | Terra-Gen Dixie Valley, LLC, TGP Dixie Development Company, LLC, and New York Canyon, LLC. |
| | EL10–36–000 | Green Borders Geothermal, LLC v. Terra-Gen Dixie Valley, LLC. |
| E–2 | RR09–7–000 | North American Electric Reliability Corporation. |
| | AD10–14–000 | Reliability Standards Development and NERC and Regional Entity Enforcement. |
| E–3 | RR09–6–001 | North American Electric Reliability Corporation. |
| E–4 | RM10–22–000 | Promoting a Competitive Market for Capacity Reassignment. |
| E–5 | OMITTED. | |
| E–6 | OMITTED. | |
| E–7 | RD10–5–000 | North American Electric Reliability Corporation. |
| E–8 | RD09–5–000 | North American Electric Reliability Corporation. |
| E–9 | ER08–858–000, ER08–858–001, ER08–867–000, ER08–867–002. | PJM Interconnection, L.L.C. and New York Independent System Operator, Inc. |
| | EL02–23–000, EL02–23–014 | Consolidated Edison Company of New York, Inc. v. Public Service Electric and Gas Company, PJM Interconnection, L.L.C. and New York Independent System Operator, Inc. |
| E–10 | ER05–1410–016, EL05–148–016, ER09–412–011. | PJM Interconnection, L.L.C. |
| E–11 | ER10–1418–000 | Exelon Generation Company, LLC. |
| E–12 | EL10–23–001, EL10–23–002 | Sagebrush, a California Partnership. |
| E–13 | EL00–66–012 | Louisiana Public Service Commission and the Council of the City of New Orleans v. Entergy Corporation. |
| E–14 | EL10–22–001 | Tres Amigas LLC. |
| E–15 | ER10–396–001 | Tres Amigas LLC. |
| E–16 | ER09–1039–001 | Southwest Power Pool, Inc. |
| E–17 | ER09–1050–003, ER09–1192–000 | Southwest Power Pool, Inc. |
| | **Multi-Industry** | |
| M–1 | PL10–4–000 | Enforcement of Statutes, Regulations and Orders. |
| | **Hydro** | |
| H–1 | P–2210–192 | Appalachian Power Company. |
| H–2 | P–400–054 | Public Service Company of Colorado. |
| H–3 | P–12646–012 | City of Broken Bow, Oklahoma. |
| H–4 | RM10–27–001 | Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands. |
| | **Certificates** | |
| C–1 | CP10–14–000 | Kern River Gas Transmission Company. |

962ND—MEETING—Continued

September 16, 2010, 10 a.m.

| Item No. | Docket No. | Company |
|---|---|---|
| C–2 ..... | CP10–255–000 ..... | Texas Gas Transmission, LLC. |
| C–3 ..... | CP10–470–000 ..... | El Paso Natural Gas Company. |
| C–4 ..... | CP10–136–000 ..... | Empire Pipeline, Inc. |
| C–5 ..... | CP10–433–000 ..... | Iroquois Gas Transmission System, L.P. |
| C–6 ..... | CP09–161–001 ..... | Bison Pipeline LLC. |

**Kimberly D. Bose,**

*Secretary.*

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2010–22942 Filed 9–10–10; 11:15 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9201–5]**

### National Environmental Justice Advisory Council; Notice of Charter Renewal

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Charter Renewal.

The Charter for the Environmental Protection Agency's (EPA) National Environmental Justice Advisory Council (NEJAC) will be renewed for an additional two-year period. This is a committee of public interest and acts in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 section 9(c). The purpose of the NEJAC is to provide advice and recommendations to the Administrator on issues associated with integrating environmental justice concerns into EPA's programs, policies, and activities. Particular areas of focus may include community engagement, science, regulatory development, and enforcement and compliance.

Inquiries may be directed to Victoria Robinson, NEJAC Designated Federal Officer, U.S. EPA, 1200 Pennsylvania Avenue, NW., (Mail Code 2201A), Washington, DC 20460.

Dated: September 8, 2010.

**Charles Lee,**

*Director, Office of Environmental Justice, Office of Enforcement and Compliance Assurance.*

[FR Doc. 2010–22858 Filed 9–13–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[Regional Docket Nos. V, FRL–9201–4]**

### Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Alliant Energy—WPL Edgewater Generating Station

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final order on petition to object to Clean Air Act operating permit.

**SUMMARY:** This document announces that the EPA Administrator has responded to a petition asking EPA to object to a Clean Air Act (Act) operating permit issued by the Wisconsin Department of Natural Resources. Specifically, the Administrator granted in part and denied in part the petition submitted by David Bender of McGillivray Westerberg and Bender, LLC, on behalf of the Sierra Club, to object to the operating permit for Alliant Energy—Wisconsin Power and Light Edgewater Generating Station.

Pursuant to section 505(b)(2) of the Act, a petitioner may seek judicial review in the United States Court of Appeals for the appropriate circuit of those portions of the petition which EPA denied. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

**ADDRESSES:** You may review a copy of the final order, the petition, and other supporting information at the EPA Region 5 Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for the Edgewater Generating Station petition is available electronically at: *http://www.epa.gov/region7/air/title5/petitiondb/petitions/edgewater_response2009.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Pamela Blakley, Chief, Air Permits Section, Air Programs Branch, Air and Radiation Division, EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–4447.

**SUPPLEMENTARY INFORMATION:** The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of the EPA review period to object to state operating permits if EPA has not done so. A petition must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise issues during the comment period, or the grounds for the issues arose after this period.

On October 3, 2009, David Bender of McGillivray Westerberg & Bender LLC, submitted a petition to EPA on behalf of the Sierra Club, requesting that EPA object to the Title V operating permit for the Alliant Energy—WPL Edgewater Generating Station. The petition raised issues regarding: (1) The alleged failure to include maximum gross generation, heat input and fuel usage limits that were contained in preconstruction permit applications as enforceable

limits in the permit; (2) the sufficiency of particulate matter (PM) and opacity monitoring; and (3) the alleged failure of WDNR to include in the permit plans it relied upon in issuing the permit and to make those plans available for public notice and comment.

On August 18, 2010, the Administrator issued an order granting in part and denying in part the petition. The order explains the reasons behind EPA's conclusions.

Dated: September 1, 2010.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2010–22857 Filed 9–13–10; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2914]**

## PETITION FOR RECONSIDERATION OF ACTION IN RULEMAKING PROCEEDING

September 2, 2010.

**SUMMARY:** A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by September 29, 2010. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Culebra, Puerto Rico, Charlotte Amalie, and Christiansted, Virgin Islands (MM Docket No. 08–243)

NUMBER OF PETITIONS FILED: [1]

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2010–22870 Filed 9–13–10; 8:45 am]

**BILLING CODE 6712–01–S**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act; Notice of Meeting

**TIME AND DATE:** a.m. (Eastern Time) September 20, 2010.

**PLACE:** 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

**STATUS:** All parts will be open to the public.

**MATTERS TO BE CONSIDERED:**

1. Approval of the minutes of the August 16, 2010 Board Member Meeting
2. Thrift Savings Plan Activity Report by the Executive Director
   a. Monthly Participant Activity Report
   b. Monthly Investment Performance Review
   c. Legislative Report
3. Annual Budget Reports
   a. Fiscal Year 2010 Expenditures
   b. Fiscal Year 2011 Budget
   c. Fiscal Year 2012 Estimates

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: September 10, 2010.

**Thomas K. Emswiler,**

*Secretary, Federal Retirement Thrift Investment Board.*

[FR Doc. 2010–23003 Filed 9–10–10; 4:15 pm]

**BILLING CODE 6760–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Decision To Evaluate a Petition To Designate a Class of Employees From the Wah Chang Facility, Albany, OR, To Be Included in the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Wah Chang facility, Albany, Oregon, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

*Facility:* Wah Chang.

*Location:* Albany, Oregon.

*Job Titles and/or Job Duties:* All employees who worked in any buildings.

*Period of Employment:* Operational period from January 1, 1971 through December 31, 1972, and the residual radioactivity period from January 1, 1973 through October 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2010–22846 Filed 9–13–10; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Case Plan Requirement, Title IV–E of the Social Security Act.

*OMB No.:* 0980–0140.

*Description:* Under section 471(a)(16) of title IV–B of the Social Security Act (the Act), to be eligible for payments, states must have an approved title IV–B plan that provides for the development of a case plan for each child for whom the State receives foster care maintenance payments and that provides a case review system that meets the requirements in section 475(5) and 475(6) of the Act. The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110–351) added a new section 479B to the Act providing authority at 479B(b) for an Indian Tribe, Tribal organization or Tribal consortia (hereafter "Tribe") to elect to operate a title IV–F program with an approved title IV–E plan. Tribes are to operate a program in the same manner as States and must provide for a case plan for each child and for a case review system. The case review system assures that each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family-like) setting available and in close proximity to the child's parental home, consistent with the best interest and special needs of the child. Through these requirements, States and Tribes also comply, in part, with title IV–B section 422(b) of the Act, which assures certain protections for children in foster care.

The case plan is a written document that provides a narrative description of the child-specific program of care. Federal regulations at 45 CFR 1356.21(g) and section 475(1) of the Act delineate the specific information that should be addressed in the case plan. The Administration for Children and Families (ACF) does not specify a recordkeeping format for the case plan nor does ACF require submission of the document to the Federal government. Case plan information is recorded in a format developed and maintained by the State or Tribal child welfare agency.

*Respondents:* State and Tribe title IV–B and title IV–E agencies.

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Case Plan | 603,453 | 1 | 4.79 | 2,891,169 |

*Estimated Total Annual Burden Hours:* 2,891,169.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

**OMB Comment**

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Dated: September 7, 2010.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2010–22788 Filed 9–13–10; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**HRSA Telehealth Outcome Measures (OMB No. 0915–0311)—Extension**

In order to help carry out its mission, the Office for the Advancement of Telehealth (OAT) created a set of performance measures that grantees can use to evaluate the effectiveness of their services programs and monitor their progress through the use of performance reporting data. As required by the Government Performance and Review Act of 1993 (GPRA), all Federal agencies must develop strategic plans describing their overall goal and objectives. OAT has worked with its grantees to develop performance measures to be used to evaluate and monitor the progress of the grantees. Grantee goals are to: improve access to needed services; reduce rural practitioner isolation; improve health system productivity and efficiency; and improve patient outcomes. In each of these categories, specific indicators were designed to be reported through a performance monitoring Web site.

The estimates of burden are as follows:

| Form | Number of respondents | Average number of responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Performance Measurement Tool | 667 | 2 | 1,334 | 7 | 9,338 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: September 7, 2010.

**Sahira Rafiullah,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2010–22797 Filed 9–13–10; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0466]**

### Cooperative Agreement to Support the Foodborne Disease Burden Epidemiology Reference Group of the World Health Organization (U18)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its intention to receive and consider a single source application for the award of a cooperative agreement in fiscal year 2010 (FY10) to the World Health Organization (WHO). One of the primary goals of the WHO is to provide for timely collaboration on multinational cooperative activities.

**DATES:** Important dates are as follows:

1. The application due date is September 16, 2010.
2. The anticipated start date is September 2010.
3. The opening date is September 16, 2010.
4. The expiration date is September 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** *Center Contact*: Salvatore Evola, Center for Food Safety and Applied Nutrition (HFS–300), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2164, e-mail: *evola.salvatore@fda.hhs.gov*.

*Grants Management Contact*: Kimberly Pendleton, Division of Acquisition Support and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2104, Rockville, MD 20857, 301–827–9363, FAX: 301–827–7101, e-mail: *Kimberly.Pendleton@fda.hhs.gov*.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.fda.gov/Food/NewsEvents/ucm176500.htm*.

**SUPPLEMENTARY INFORMATION:**

## I. Funding Opportunity Description

Catalog of Federal Domestic Assistance Number: 93.103

### *A. Background*

This funding opportunity is a single source application for the award of a cooperative agreement to the WHO to support the Initiative to Estimate the Global Burden of Foodborne Diseases—Foodborne Disease Burden Epidemiology Reference Group (FERG). This cooperative agreement ensures FDA's participation and leadership in important international risk assessment and public health efforts involving microbiological and chemical hazards. Competition is limited to WHO because it is the parent organization of FERG.

### *B. Research Objectives*

The WHO's FERG comprises over 30 internationally renowned experts in a broad range of disciplines relevant to global foodborne disease epidemiology.

FERG consists of the following groups:

- a Core (or Steering) Group to coordinate and oversee the scientific work;
- four different Thematic Task Forces advancing the work in specific areas: Infectious diseases, chemicals and toxins, source attribution, and country burden of disease protocols; and
- external resource advisers who are invited on an ad hoc basis to provide specific expertise.

FERG is charged with the following tasks:

- assemble, appraise, and report on the current, the projected, and the averted burden of foodborne disease estimates;
- conduct epidemiological reviews for mortality, morbidity, and disability in each of the major foodborne diseases;
- provide models for the estimation of foodborne disease burden where data are lacking;
- develop cause attribution models to estimate the proportion of diseases that are foodborne; and, most importantly,
- use the FERG models to develop user-friendly tools for burden of foodborne disease studies at country level.

In addition, FERG aims to estimate the global human health burden (expressed in Disability-Adjusted Life Years (DALYs)) of foodborne disease. FERG will initially focus on microbial, parasitic, zoonotic, and chemical contamination of food with an emphasis on diseases whose incidence and severity is thought to be high, and on pathogens and chemicals that are most likely to contaminate food and which have a high degree of preventability.

FERG is supported by the WHO Secretariat, comprising nine WHO Departments as well as international organizations (such as FAO, United Nations Environment Programme etc.) with an interest in foodborne disease burden estimation.

This agreement will strengthen and allow WHO to continue its work in important international risk assessment and public health efforts. This agreement will also assist FDA in future assessments of the potential hazards, risks, and public health impact of foodborne disease. WHO is an umbrella organization that provides for timely international collaboration on multinational cooperative activities. The evaluations that are produced by WHO expert groups are based on sound science that contributes to improved public health and food safety worldwide. The following activities are to be supported by this cooperative agreement: (1) Schedule, plan, and conduct appropriate work groups, consultations, and committee meetings; (2) identify advisers, and prepare written working papers summarizing the data on foodborne contaminants under consideration; and (3) prepare written working papers and technical documents for the FAO/WHO Expert Consultations related to contaminants (microbiological and chemical) in food.

### *C. Eligibility Information*

Competition is limited to WHO because it has unique expertise and capacity found nowhere else. As part of the implementation of the WHO Global Strategy for Food Safety, WHO launched the Initiative to Estimate the Global Burden of Foodborne Diseases from all major causes (of microbiological, parasitic, and chemical origin) and in 2007 established FERG to estimate the global health burden of foodborne disease (and to express the estimate in DALYs) (*http://www.who.int/foodsafety/foodborne_disease/ferg*). (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) FERG is a multisectoral and multidisciplinary group of global experts in foodborne diseases and representatives from numerous UN and other international agencies as well as National bodies (including the U.S. agencies FDA, United States Department of Agriculture and Centers for Disease Control and Prevention, among others). FERG operates through several Task Forces in the area of parasitic diseases, enteric diseases, chemicals and toxins, and source attribution (the latter aims to provide evidence that links burden of disease to specific food commodities, where possible). While FERG is reviewing all existing scientific evidence, including surveillance data, the full picture of the global health burden of foodborne disease can only be established if national level estimates of the health burden of foodborne disease are collected. FERG therefore launched the Country Studies Task Force which aims to strengthen the capacity of countries to undertake national burden of foodborne disease assessments, and provides countries with tools with which to conduct these studies and continue to monitor disease burden in the long-term. A further strength of such data lies in its ability to assist countries to detect important food safety threats early and to make and apply food safety policies and interventions based on sound scientific evidence pertinent to that country. WHO aims to conduct such studies in all six regions over the coming years.

## II. Award Information/Funds Available

*A. Award Amount*

The estimated amount of support in FY10 will be up to $100,000 total costs (direct plus indirect costs), with the possibility of 2 additional years of support for a total (over 3 years) of up to $300,000, subject to the availability of funds.

*B. Length of Support*

The award will provide 1 year of support, with the possibility of 2 additional years of support, contingent upon satisfactory performance in the achievement of project and program reporting objectives during the preceding year and the availability of Federal fiscal year appropriations.

## III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://www.fda.gov*. Persons interested in applying for a grant may obtain an application at *http://grants.nih.gov/grants/forms.htm*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With Central Contractor Registration
- Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp*. Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp*. After you have followed these steps, submit paper applications to: Kimberly Pendleton, Division of Acquisition Support and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2104, Rockville, MD 20857, 301–827–9363, FAX: 301–827–7101, e-mail: *Kimberly.Pendleton@fda.hhs.gov*.

Dated: September 9, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–22863 Filed 9–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281, DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

DynaLIFE Dx *, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876 (Formerly: Dynacare Kasper Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.,).

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register,** July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: September 8, 2010.

**Elaine Parry,**

*Director, Office of Management, Technology, and Operations, SAMHSA.*

[FR Doc. 2010–22818 Filed 9–13–10; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–P–0157]**

### Determination That VESANOID (Tretinoin) Capsules, 10 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that VESANOID (tretinoin) Capsules, 10 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of the abbreviated new drug application (ANDA) that refers to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

**FOR FURTHER INFORMATION CONTACT:** Molly Flannery, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6237, Silver Spring, MD 20993–0002, 301–796–3543.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–

417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

VESANOID (tretinoin) Capsules, 10 mg, are the subject of NDA 20–438, held by Hoffman-La Roche Inc. (Roche), and initially approved on November 22, 1995. VESANOID is indicated for the "induction of remission in patients with acute promyelocytic leukemia (APL), French-American-British (FAB) classification M3 (including the M3 variant), characterized by the presence of the t(15;17) translocation and/or the presence of the PML/RARα [promyelocytic leukemia/retinoic acid receptor alpha] gene who are refractory to, or who have relapsed from, anthracycline chemotherapy, or for whom anthracycline-based chemotherapy is contraindicated" (VESANOID labeling).

In a letter dated December 2, 2009, Roche notified FDA that VESANOID (tretinoin) Capsules, 10 mg, were being discontinued, and FDA moved the drug product to the "Discontinued Drug Product List" section of the Orange Book. There is one approved ANDA for tretinoin capsules, 10 mg (ANDA No. 77–684); this drug product is listed in the Orange Book and, following the discontinuation of VESANOID, was designated as the reference listed drug to which new ANDAs should refer.

Rakoczy Molino Mazzochi Siwik LLP submitted a citizen petition dated March 17, 2010 (Docket No. FDA–2010–P–0157), under 21 CFR 10.30, requesting that the agency determine whether VESANOID (tretinoin) Capsules, 10 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA has determined under § 314.161 that VESANOID (tretinoin) Capsules, 10 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that VESANOID (tretinoin) Capsules, 10 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of VESANOID (tretinoin) Capsules, 10 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events and have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the agency will continue to list VESANOID (tretinoin) Capsules, 10 mg, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of the approved ANDA that refers to VESANOID. Additional ANDAs for tretinoin capsules, 10 mg, may also be approved by the agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: September 8, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–22807 Filed 9–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–D–0462]**

### Draft Guidance for Industry on Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Agents for Treatment; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Agents for Treatment." The purpose of this guidance is to assist sponsors in all phases of development of direct-acting antiviral agents (DAAs), defined as agents that interfere with specific steps in the hepatitis C virus (HCV) replication cycle. The guidance outlines the types of nonclinical studies and clinical trials recommended throughout the drug development process to support approval of treatments for chronic hepatitis C (CHC), including in patients with compensated and decompensated cirrhosis and those co-infected with human immunodeficiency virus (HIV). The guidance also addresses pre-approval access in the form of treatment investigational new drug applications (INDs) and intermediate-sized safety protocols.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 15, 2010.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Murray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6360, Silver Spring, MD 20993–0002, 301–796–1500.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Agents for Treatment." This draft guidance addresses nonclinical development, early phases of clinical development, phase 3 protocol designs, and endpoints for the treatment of CHC, including in patients who are treatment naïve or experienced, patients without cirrhosis, patients with compensated and decompensated cirrhosis, and patients co-infected with HCV and HIV. Important issues addressed in this guidance include: Drug development methods to reduce the emergence of drug resistance, types of trial designs to assess optimal dose and treatment duration, combination therapy with multiple investigational drugs, recommendations on development of drugs to meet unmet medical needs, and use of treatment INDs or other smaller safety protocols to provide early access of multiple DAAs for patients at risk of imminent progression of liver disease.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on developing DAAs for treatment of CHC virus infection. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014, the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001, and the collections of information referred to in the guidance "Establishment and Operation of Clinical Trial Data Monitoring Committees" have been approved under OMB control number 0910–0581.

## III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: September 8, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–22806 Filed 9–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0455]**

### North American Bioproducts Corporation; Filing of Food Additive Petition (Animal Use); Penicillin G Procaine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that North American Bioproducts Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of penicillin G procaine as an antimicrobial processing aid in fuel-ethanol fermentations with respect to its consequent presence in by-product distiller grains used as an animal feed or feed ingredient.

**DATES:** Submit either electronic or written comments on the petitioner's environmental assessment by October 14, 2010.

**ADDRESSES:** Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Isabel W. Pocurull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853, email: *isabel.pocurull@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2268) has been filed by North American Bioproducts Corp., Corporate Support Center, 1815 Satellite Blvd., Bldg. 200, Duluth, GA 30097. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of penicillin G procaine as an antimicrobial processing aid in fuel-ethanol fermentations with respect to its consequent presence in by-product distiller grains used as an animal feed or feed ingredient.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **ADDRESSES**) for public review and comment.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. It is only necessary to submit one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: September 8, 2010.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 2010–22811 Filed 9–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Assay for Arf GTP-Binding Proteins**

*Description of Invention:* The worldwide laboratory research reagents market is expected to surpass $13 billion in 2010, and the field of biotechnology appears key to maintaining the market's growth. Antibodies are becoming increasingly significant, especially for targeting the diseased cells and cell compounds.

Researchers at the National Cancer Institute (NCI), NIH, have developed an antibody-based assay that measures levels of Arf GTP-binding proteins, some of which have been linked to the invasive behavior of cancer cells. The assay is robust, can be performed both on cell lysates and fixed cells, and can distinguish among specific endogenous Arf-GTP isoforms.

*Applications:*

• Research on Arf function in physiology and cancer.

• Research on cancer invasion.

• Research on membrane traffic and actin reorganization.

*Advantages:*

• Ability to distinguish between the specific isoforms (i.e., Arf1, Arf3, Arf4, Arf5, and Arf6).

• Antibodies bind preferentially to the GTP-bound form of Arf.

*Inventor:* Paul A. Randazzo (NCI).

*Relevant Publications:*

1. Spang A *et al.* Arf GAPs: gatekeepers of vesicle generation. FEBS Lett. 2010 Jun 18;584(12):2646–2651. [PubMed: 20394747].

2. Campa F and Randazzo PA. Arf GTPase-activating proteins and their potential role in cell migration and invasion. Cell Adh Migr. 2008 Oct; 2(4):258–262. [PubMed: 19262159].

*Patent Status:* HHS Reference No. E–198–2010/0—Research Material. Patent protection is not being pursued for this technology.

*Licensing Status:* Available for licensing.

*Licensing Contact:* Patrick P. McCue, PhD, (301) 435–5560; *mccuepat@mail.nih.gov*.

*Collaborative Research Opportunity:* The Center for Cancer Research, Laboratory of Cellular and Molecular Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

**Sequences Encoding Two Novel Human Polyomaviruses**

*Description of Invention:* Researchers at the National Cancer Institute, NIH, have discovered two species of a previously unknown polyomavirus genus.

Polyomaviruses are a diverse group of DNA-based viruses that infect humans and various animals. At least one human polyomavirus, the Merkel cell polyomavirus (MCV), plays a causal role in the development of an unusual form of skin cancer called Merkel cell carcinoma. The coat proteins of polyomaviruses can spontaneously assemble into virus-like particles (VLPs) similar to those that have been used in the recent vaccines against human papillomaviruses (HPVs).

*Applications:*

• Development of clinical diagnostic assays to detect linkages between the new polyomaviruses and human cancers.

• Development of a VLP-based prophylactic vaccine similar to the HPV vaccine.

*Advantages:* DNA sequences have broad applications in the studies of polyomavirus infection mechanisms and carcinogenesis. Notably, they are:

• Identification and purification of the normal and mutated polyomaviral proteins.

• Studies of antisense oligonucleotides in polyomavirus biology.

• Development of polyclonal and monoclonal antibodies against polyomaviruses.

*Development Status:* Pre-clinical.

*Inventors:* Christopher B. Buck and Diana V. Pastrana (NCI).

*Relevant Publication:* Schowalter RM *et al.* Merkel cell polyomavirus and two previously unknown polyomaviruses are chronically shed from human skin. Cell Host Microbe Jun 25;7(6):509–515. [PubMed: 20542254].

*Patent Status:* U.S. Provisional Application No. 61/318,080 filed 26 Mar 2010 (HHS Reference No. E–051–2010/0–US–01).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Patrick P. McCue, PhD; 301–435–5560; *mccuepat@mail.nih.gov*.

**Fenoterol and Fenoterol Analogues for Treatment of Glioma, Glioblastoma, and Astrocytoma**

*Description of Invention:* To date there is no effective treatment for the brain tumors or brain cancers indentified as gliomas, glioblastomas, or astrocytomas.

This technology relates to the discovery that fenoterol and related analogues block astrocytoma and glioblastoma cell division at low doses. In a xenograft model utilizing the 1321N1 astrocytoma tumor implanted in the flank of SKID mice, the (R,R)-4-methoxyfenoterol analogue significantly decreased tumor growth relative to a control group receiving vehicle and studies utilizing [$^3$H]-(R,R)-4-methoxyfenoterol have shown that the compound readily passes the blood-brain barrier. The anti-tumor effect is associated with the ability of fenoterol and related analogues to induce production of cyclic adenosine monophosphate (cAMP), which is normally decreased in glioblastomas and astrocytomas. Induced cAMP production inhibits brain tumor growth in vivo. Fenoterol and related analogues are beta-2 adrenergic receptor (β2 AR) agonists and the anti-tumor effect is associated with the expression of this receptor. Since there is a heterogeneous expression of β2 AR in human brain tumors, patients who will respond to fenoterol therapy can be predetermined leading to individualized treatment. In addition to use in the initial treatment of brain tumors, the systemic and CNS bioavailability of the drug after oral

administration and the minimal systemic toxicity suggest that fenoterol and it analogs can be used in the adjuvant treatment of patients with β2 AR-positive gliomas, glioblastomas or astrocytomas. Studies with a number of fenoterol analogs and CNS-implanted tumors are in progress.

The fenoterol analogues discussed in this technology are subject to HHS Ref. No. E–205–2006/3 (U.S. Patent Application No. 12/376,945 and PCT Publication No. WO/2008/022038).

*Applications:* Therapeutic in the front line and adjuvant treatment of glioma, glioblastoma and astrocytoma.

*Advantages:* Potential first-in-class therapeutic for multiple types of brain tumors.

*Development Status: In vivo:* tumor models in SKID mice. *In vitro:* cell-based assays using human glioblastoma and astrocytoma cell lines. Further *in vivo* studies in animal models are underway.

*Market:* Approximately 17,000 Americans are diagnosed with gliomas annually (*http://www.mayoclinic.org/glioma/*).

*Inventors:* Irving W. Wainer (NIA), *et al.*

*Publication:* Submitted.

*Patent Status:* U.S. Provisional Application No. 61/312,642 filed 10 Mar 2010 (HHS Reference No. E–013–2010/0).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov*.

*Collaborative Research Opportunity:* The National Institute on Aging, Laboratory of Clinical Investigation, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of fenoterol and fenoterol analogs in the front line and adjuvant treatment of CNS tumors and other β2 AR expressing tumors. Please contact Nicole Darack, PhD at 301–435–3101 or *darackn@mail.nih.gov* for more information.

**Chemical Attraction: Cell Lines Expressing the CXCR1 or CXCR2 Chemokine Receptors**

*Description of Invention:* Chemoattractant receptors have been identified as important factors in regulating many innate and adaptive immune responses. Modulation of these receptors have implications for shifting immune responses to create either a dampening effect in fighting inflammatory diseases, such as autoimmune diseases or cardiovascular diseases, or a boosting effect to generate more effective responses to infectious agents, tumors, and promote wound healing. Chemokine receptors are expressed on a variety of tumor cells and play a role in helping cancer cells sense new microenvironments for metastatic growth.

Scientists at the National Institutes of Health (NIH) have developed human embryonic kidney (HEK) 293 cell lines that express the CXCR1 chemokine receptor or the CXCR2 chemokine receptor. These two receptors are also known as the IL-8 receptor-alpha and IL-8 receptor-beta, respectively. They both effectively bind IL-8, a potent neutrophil chemoattractant, as well as other chemokines with varying affinities. The collection of cell lines produced by these scientists includes HEK 293 cells that express the wild-type CXCR1, wild-type CXCR2, or mutant variants of each receptor. The cell lines were created by stably transfecting vectors containing the cDNA for each receptor into HEK 293 cells. HEK 293 cells transfected with the wild-type CXCR1 or CXCR2 display strong chemoattractant properties when placed in the presence of their corresponding CXC family chemokines, such as IL-8.

*Application:*

- Research tools for testing the activity of potential drugs and chemokine analogs in their ability to block cellular responses triggered by CXC chemokines, such as inflammatory responses induced by IL-8
- Cell lines expressing the wild-type CXCR1 or CXCR2 can serve as positive controls in chemokine receptor studies designed to identify novel chemoattractants or agents that inhibit chemokinetic functions.
- Research tool for screening compounds that block these receptors as a possible anti-cancer agent to inhibit angiogenesis and metastasis

*Advantages:*

- *Both wild-type and mutant cell lines available:* Wild-type CXCR1/CXCR2 receptors or mutant receptors with point and deletion mutations have been cloned into HEK 293 cells. These cell lines will have varying degrees of potency for their chemoattractant responses to provide a range of functional comparisons in chemokine studies.
- *Experimental verification of response to CXC family chemokines:* The scientists have compiled years of data over various publications indicating that these receptors respond appropriately to a profile of chemokines.

*Inventors:* Joost Oppenheim, Adit Ben-Baruch, Ji Ming Wang, David Kelvin (all NCI).

*Publications:*

1. E Cohen-Hillel, *et al.* Cell migration to the chemokine CXCL8: paxillin is activated and regulates adhesion and cell motility. Cell Mol Life Sci. 2009 Mar;66(5):884–899. [PubMed: 19151925].

2. H Attal, *et al.* Intracellular cross-talk between the GPCR CXCR1 and CXCR2: role of carboxyl terminus phosphorylation sites. Exp Cell Res. 2008 Jan 15;314(2):352–365. [PubMed: 17996233].

3. A Ben-Baruch, *et al.* The differential ability of IL–8 and neutrophil-activating peptide-2 to induce attenuation of chemotaxis is mediated by their divergent capabilities to phosphorylate CXCR2 (IL–8 receptor B). J Immunol. 1997 Jun 15;158(12):5927–5933. [PubMed: 9190946].

4. A Ben-Baruch, *et al.* IL–8 and NAP–2 differ in their capacities to bind and chemoattract 293 cells transfected with either IL–8 receptor type A or type B. Cytokine 1997 Jan;9(1):37–45. [PubMed: 9067094].

5. A Ben-Baruch, *et al.* Interleukin-8 receptor beta. The role of the carboxyl terminus in signal transduction. J Biol Chem. 1995 Apr 21;270(16):9121–9128. [PubMed: 7721826].

*Patent Status:* HHS Reference No. E–221–2009/0—Research Tool. Patent protection is not being pursued for this technology.

*Licensing Status:* Available for licensing under a Biological Materials License Agreement.

*Licensing Contact:* Samuel E. Bish, Ph.D.; 301–435–5282; *bishse@mail.nih.gov*.

**DLC–1 Gene Deleted in Cancers**

*Description of Invention:* Chromosomal regions that are frequently deleted in cancer cells are thought to be the loci of tumor suppressor genes, which restrict cell proliferation. Recurrent deletions on the short arm of human chromosome 8 in liver, breast, lung and prostate cancers have raised the possibility of the presence of tumor suppressor genes in this location.

The inventors have discovered the deletion of human DLC–1 gene in hepatocellular cancer (HCC) cells. They have performed in vitro experiments demonstrating the deletion in over 40% of human primary HCC and in 90% of HCC cell lines. The DLC–1 gene is located on human chromosome 8p21.3–22, a region frequently deleted in many types of human cancer. DLC–1 mRNA is

expressed in all normal tissues tested, but it has either no or low expression in a high percentage of several types of human cancer, such as liver, breast, lung, and prostate cancers. Through in vitro and in vivo tumor suppression experiments, the inventors further demonstrated that DLC–1 acts as a new tumor suppressor gene for different types of human cancer.

*Applications:*

- Method to diagnose HCC.
- Method to treat HCC patients with DLC–1 compositions.
- Transgenic model to study HCC and other types of human cancer.
- DLC–1 compositions.

*Market:*

- Primary liver cancer accounts for about 2% of cancers in the U.S., but up to half of all cancers in some undeveloped countries.
- 251,000 new cases are reported annually.
- Post-operative five year survival rate of HCC patients is 30–40%.

*Development Status:* The technology is currently in the pre-clinical stage of development.

*Inventors:* Bao-Zhu Yuan, Snorri S. Thorgeirsson, Nicholas Popescu (NCI).

*Publications:*

1. BZ Yuan *et al.* DLC–1 operates as a tumor suppressor gene in human non-small cell lung carcinomas. Oncogene. 2004 Feb 19;23(7):1405–1411. [PubMed: 14661059].

2. BZ Yuan *et al.* DLC–1 gene inhibits human breast cancer cell growth and in vitro tumorigenicity. Oncogene. 2003 Jan 23;22(3):445–450. [PubMed: 12545165].

3. BZ Yuan *et al.* Promoter hypermethylation of DLC–1, a candidate tumor suppressor gene, in several common human cancers. Cancer Genet Cytogenet. 2003 Jan 15;140(2):113–117. [PubMed: 12645648].

4. BZ Yuan *et al.* Cloning, characterization, and chromosomal localization of a gene frequently deleted in human liver cancer (DLC–1) homologous to rat RhoGAP. Cancer Res. 1998 May 15;58(10):2196–2199. [PubMed: 9605766].

*Patent Status:*

- U.S. Patent No. 6,897,018 issued 24 May 2005 (HHS Reference No. E–042–1998/0–US–03).
- U.S. Patent No. 7,534,565 issued 19 May 2009 (HHS Reference No. E–042–1998/0–US–05).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*.

*Collaborative Research Opportunity:* The National Cancer Institute, Laboratory of Experimental Carcinogenesis, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize diagnostics based on tumor suppressor genes. Please contact John D. Hewes, PhD, at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: September 7, 2010.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2010–22834 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1338–CN]**

**RIN 0938–AP87**

### Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2011; Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction notice.

**SUMMARY:** This document corrects technical errors that appeared in the notice with comment period published in the **Federal Register** on July 22, 2010 entitled, "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2011."

**DATES:** *Effective Date:* This correction is effective October 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Bill Ullman, (410) 786–5667.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In FR Doc. 2010–17628 of July 22, 2010 (75 FR 42886), there were several technical errors that are identified and corrected in the "Correction of Errors" section below. The corrections described below are effective as if they had been included in the document published on July 22, 2010. Accordingly, the corrections are effective October 1, 2010.

### II. Summary of Errors

We are correcting the titles and wage index columns (along with the resulting values) of Tables 8A and 8B, which appeared on page 42911 of the July 22, 2010 notice with comment period. These two tables illustrate the skilled nursing facility (SNF) prospective payment system (PPS) payment rate computations for a hypothetical "XYZ" SNF located in Cedar Rapids, IA (Urban CBSA 16300) under the RUG–IV and Hybrid RUG–III (HR–III) systems, respectively. In the title of the tables as well as in the third column ("Wage Index"), the wage index value for Cedar Rapids, IA is incorrectly displayed as 0.8858. Accordingly, in section III of this document ("Correction of Errors"), we are revising the entries in Tables 8A and 8B to reflect the correct wage index value of 0.8844. We are similarly revising the immediately preceding portion of the preamble text, which references the total PPS payment amounts displayed in these two tables. However, we note that the corresponding entry for CBSA 16300, as it appears in an addendum to the July 22, 2010 notice with comment period (Table A, "FY 2011 Wage Index for Urban Areas Based on CBSA Labor Market Areas"), already reflects the correct wage index value of 0.8844 (75 FR 42923). We are also revising the footnote that appears in Tables 8A and 8B to clarify that in these examples, all 10 of the Medicare days listed under the "CC2" RUG group would involve a resident with AIDS and, thus, would qualify for the special 128 percent adjustment under section 511 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003).

### III. Correction of Errors

In FR Doc. 2010–17628 (75 FR 42886), make the following corrections:

1. On page 42910, third column, in line five from the bottom of the page, the phrase "$41,979 for RUG–IV and $36,517 for HR–III, respectively" is revised to read "$41,935 for RUG–IV and $36,479 for HR–III, respectively".

2. On page 42911, Tables 8A and 8B are revised to read as follows:

3. On page 42911, underneath Table 8A and Table 8B, we removed the asterisk statement "*Reflects a 128 percent adjustment from section 511 of the MMA" and replaced it with "*Reflects a 128 percent adjustment from section 511 of the MMA. All CC2 days should be considered to be for a resident with AIDS."

**Table 8A**
**RUG-IV**
**SNF XYZ: Located in Cedar Rapids, IA (Urban CBSA 16300)**
**Wage Index: 0.8844**

| RUG-IV Group | Labor | Wage index | Adjusted Labor | Non-Labor | Adjusted Rate | Percent Adjustment | Medicare Days | Payment |
|---|---|---|---|---|---|---|---|---|
| **RVX** | $545.24 | 0.8844 | $482.21 | $241.42 | $723.63 | $723.63 | 14 | $10,131.00 |
| **ES2** | $358.74 | 0.8844 | $317.27 | $158.84 | $476.11 | $476.11 | 30 | $14,283.00 |
| **RHA** | $260.41 | 0.8844 | $230.31 | $115.30 | $345.61 | $345.61 | 16 | $5,530.00 |
| **CC2** | $207.79 | 0.8844 | $183.77 | $ 92.00 | $275.77 | *$628.75 | 10 | $6,288.00 |
| **BA2** | $143.25 | 0.8844 | $126.69 | $ 63.42 | $190.11 | $190.11 | 30 | $5,703.00 |
| | | | | | | | 100 | $41,935.00 |

*Reflects a 128 percent adjustment from section 511 of the MMA. All CC2 days should be considered to be for a resident with AIDS.

**Table 8B**
**HYBRID RUG-III**
**SNF XYZ: Located in Cedar Rapids, IA (Urban CBSA 16300)**
**Wage Index: 0.8844**

| HR-III Group | Labor | Wage index | Adjusted Labor | Non-Labor | Adjusted Rate | Percent Adjustment | Medicare Days | Payment |
|---|---|---|---|---|---|---|---|---|
| **RVX** | $383.12 | 0.8844 | $338.83 | $169.63 | $508.46 | $508.46 | 14 | $7,118.00 |
| **RLX** | $270.65 | 0.8844 | $239.36 | $119.83 | $359.19 | $359.19 | 30 | $10,776.00 |
| **RHA** | $262.36 | 0.8844 | $232.03 | $116.16 | $348.19 | $348.19 | 16 | $5,571.00 |
| **CC2** | $232.95 | 0.8844 | $206.02 | $103.14 | $309.16 | *$704.89 | 10 | $7,049.00 |
| **IA2** | $149.81 | 0.8844 | $132.49 | $ 66.33 | $198.82 | $198.82 | 30 | $5,965.00 |
| | | | | | | | 100 | $36,479.00 |

*Reflects a 128 percent adjustment from section 511 of the MMA. All CC2 days should be considered to be for a resident with AIDS.

**IV. Waiver of Proposed Rulemaking and Delayed Effective Date**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that a notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons for it in the notice.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the FY 2011 SNF PPS notice with comment period. We are not making substantive changes to our payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. This correction notice is intended solely to ensure that the FY 2011 SNF PPS notice with comment period accurately reflects these payment methodologies and policies. Therefore, we believe that undertaking further notice and comment rulemaking activity in connection with it would be unnecessary and contrary to the public interest.

Further, we believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical errors. The changes noted above do not make any substantive changes to the SNF PPS payment methodologies or policies. Moreover, we regard imposing a delay in the effective date as being contrary to the public interest. We believe that it is in the public interest for providers to receive appropriate SNF PPS payments in as timely a manner as possible and to ensure that the FY 2011 SNF PPS notice with comment period accurately reflects our payment methodologies, payment rates, and policies. Therefore, we find good cause to waive notice and comment procedures, as well as the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 9, 2010.

**Dawn L. Smalls,**

*Executive Secretary to the Department.*

[FR Doc. 2010–22902 Filed 9–10–10; 11:15 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Epi-Centers for the Prevention of Healthcare-Associated Infections, Antimicrobial Resistance and Adverse Events, Funding Opportunity Announcement, CI11–001, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

**Time and Date**

8 a.m.–5 p.m., November 8, 2010 (Closed).

*Place:* Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, Telephone: (770) 997–1100.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of applications received in response to "Epi-Centers for the Prevention of Healthcare-Associated Infectious, Antimicrobial Resistance and Adverse Events, FOA CI11–001."

*Contact Person for More Information:* Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010–22759 Filed 9–13–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0001]**

### Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Neurological Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on October 8, 2010, from 8 a.m. to 6 p.m.

*Location*: Hilton Washington DC North/Gaithersburg, Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

*Contact Person*: James Engles, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512513. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda*: On October 8, 2010, the committee will discuss and make recommendations regarding clinical trial design issues for devices indicated for the treatment of depression.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 30, 2010. Oral presentations from the public will be scheduled at approximately 1 p.m., immediately following lunch. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 22, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 23, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 7, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–22804 Filed 9–13–10; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0001]**

### Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee

of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Transmissible Spongiform Encephalopathies Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on October 28, 2010, from 8:30 a.m. to approximately 5 p.m. and on October 29, 2010, from 8:30 a.m. to approximately 12:30 p.m.

*Location*: Holiday Inn, Gaithersburg, 2 Montgomery Village Ave., Gaithersburg, MD, 20879.

*Contact Person*: Bryan Emery or Rosanna Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512392. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda*: On October 28, 2010, the Committee will discuss: (1) FDA's risk assessment for potential exposure to the variant Creutzfeldt-Jakob disease (vCJD) agent in U.S.-licensed plasma-derived Factor VIII and (2) labeling of blood and blood components and plasma-derived products, including plasma-derived albumin and products containing plasma-derived albumin, to address the possible risk of transmission of vCJD. On October 29, 2010, the Committee will hear informational presentations related to FDA's geographic donor deferral policy to reduce the possible risk of transmission of CJD and vCJD by blood and blood products and human cells, and tissue and cellular and tissue based products. The Committee will also hear updates on the following topics: The development of devices to remove transmissible spongiform encephalopathy agents from blood components and chronic wasting disease.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 21, 2010. Oral presentations from the public will be scheduled on October 28, 2010, between approximately 11 a.m. and 11:45 a.m. and between approximately 3:30 p.m. and 4 p.m. and on October 29, 2010, between approximately 10:30 a.m. and 11 a.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 13, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 14, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Bryan Emery at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 7, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–22805 Filed 9–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, Phase II Clinical Trial in Septic Shock.

*Date:* October 7, 2010.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18K, Bethesda, MD 20892. (Telephone Conference Call.)

*Contact Person:* Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892. 301–594–3907. *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 8, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–22843 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

*Date:* November 4–5, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Carole H. Latker, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892. 301–594–2848. *latkerc@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 8, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–22842 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Interagency Breast Cancer and Environmental Research Coordinating Committee.

*Date:* September 30–October 1, 2010.

*Time:* 8:30 a.m. to 3:30 p.m.

*Agenda:* The purpose of the meeting is to initiate the work of the Committee, which is to share and coordinate information on existing research activities, and to make recommendations to the National Institutes of Health and other Federal agencies regarding how to improve existing research programs related to breast cancer and the environment.

*Place:* JW Marriott, 1313 Pennsylvania Avenue, NW., Washington, DC 20004.

*Contact Person:* Gwen W. Collman, PhD, Acting Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709. (919) 541–4980. *collman@niehs.nih.gov*.

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (*i.e.* WORD, Rich Text, PDF) may be uploaded via the following Web site: *https://www.cmpinc.net/IBCERCC*. Alternatively, comments may be submitted via e-mail to the Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral comments you wish to present. Only one representative per organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person. Oral comments will begin at approximately 4:15 p.m. on Thursday, September 30, 2010. Although time will not be allotted for comments on Friday, October 1, 2010, members of the public are welcome to attend the entire meeting.

Anyone who wishes to attend the meeting and/or submit comments to the committee is asked to RSVP via the following Web site: *https://www.cmpinc.net/IBCERCC*. All comments are delivered to the Contact Person listed on this notice.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation— Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 8, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–22830 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0001]**

### Arthritis Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Arthritis Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on November 16, 2010, from 8 a.m. to 5 p.m.

*Location*: The Marriott Inn and Conference Center, University of Maryland University College, 3501 University Blvd East, Adelphi, MD. The conference center telephone number is 301–985–7300.

*Contact Person*: Anuja Patel, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., WO31–2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *anuja.patel@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512532. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you

should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 16, 2010, the committee will discuss biologic license application 125370, belimumab, proposed trade name BENLYSTA, sponsored by Human Genome Sciences, for the proposed indication of reducing disease activity in adult patients with active, autoantibody-positive systemic lupus erythematosus.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 1, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 22, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 25, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Anuja Patel at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 9, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–22867 Filed 9–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Patient Protection and Affordable Care Act (PPACA), Emerging Infections Program (EIP), Enhancing Epidemiology and Laboratory Capacity, Funding Opportunity Announcement (FOA) CI10–003, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 12 p.m.–2 p.m., September 21, 2010 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

This notice is being published on less than 15 days notice to the public in order for the Agency to fulfill its obligations under Section 4002(b) of the PPACA prior to 2010 Fiscal Year-End and in order to meet the objectives of the funding opportunity announcement.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of applications received in response to "Patient Protection and Affordable Care Act (PPACA), Emerging Infections Program (EIP), Enhancing Epidemiology and Laboratory Capacity, Funding Opportunity Announcement FOA CI10–003."

*Contact Person for More Information:* Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333, Telephone: (404) 498–2293. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 8, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010–22815 Filed 9–13–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel, RO1 Epidemiology Applications.

*Date:* September 29, 2010.

*Time:* 2:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NEI, 5635 Fishers Lane, Rockville, MD 20892. (Telephone Conference Call)

*Contact Person:* Samuel Rawlings, PhD, Chief, Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *rawlings@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: September 8, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–22841 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group, Health, Behavior, and Context Subcommittee.

*Date:* October 21, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* Michele C. Hindi-Alexander, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20812–7510. 301–435–8382. *hindialm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 8, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–22840 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Sampling for Gauging Environmental Stressors.

*Date:* September 29, 2010.

*Time:* 1:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, 530 Davis Drive, Morrisville, NC 27560 (Telephone Conference Call)

*Contact Person:* Sally Eckert-Tilotta, PhD, Scientific Review Officer, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Uranium Exposure Through Diet.

*Date:* September 30, 2010.

*Time:* 1:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, 530 Davis Drive, Morrisville, NC 27560 (Telephone Conference Call).

*Contact Person:* Sally Eckert-Tilotta, PhD, Scientific Review Officer, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Social Environment Effect on Mental Health.

*Date:* September 30, 2010.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, 530 Davis Drive, Morrisville, NC 27560 (Telephone Conference Call).

*Contact Person:* Sally Eckert-Tilotta, PhD, Scientific Review Officer, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 8, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–22839 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Sickle Cell Disease Advisory Committee.

*Date:* October 15, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* Discussion of Programs and Issues.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Conference Rooms 9112/9116, Bethesda, MD 20892.

*Contact Person:* W. Keith Hoots, MD, Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Suite 9030, Bethesda, MD 20892, 301–435–0080, *hootswk@nhlbi.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 8, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–22838 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel; National Research Service Award Institutional Research Training Grants.

*Date:* October 20, 2010.

*Time:* 8 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Weiqun Li, MD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel; Informed-Decision Making in Young Adolescent At-Risk for HIV/AIDS.

*Date:* November 2, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Mario Rinaudo, MD, Scientific Review Officer, Office of Review, National Inst of Nursing Research, National Institutes of Health, 6701 Democracy Blvd (DEM 1), Suite 710, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 8, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–22832 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee*: National Institute of Nursing Research Special Emphasis Panel, Clinical Trial Review.

*Date*: October 14, 2010.

*Time*: 2 p.m. to 3:30 p.m.

*Agenda*: To review and evaluate grant applications.

*Place*: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person*: Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, National Institute of Nursing Reserach, National Institutes of Health, 6701 Democracy Blvd, Rm. 710, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 8, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–22831 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Development of AAV5 Based Therapeutics To Treat Human Diseases

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the invention embodied in U.S. Patent 6, 984, 517, entitled "AAV5 and Uses Thereof," U.S. Patent 7, 479, 554, entitled "AAV5 Nucleic Acids" and PCT Application Serial No. PCT/US99/11958 and foreign equivalents thereof, entitled "AAV5 and Uses Thereof" [HHS Ref. No. E–127–1998/0]; and U.S. Patent 6, 855, 314 entitled "AAV5 Vector for Transducing Brain Cells and Lung Cells" [HHS Ref. No. E–072–2000/0] to Amsterdam Molecular Therapeutics, which is located in Amsterdam, The Netherlands. The Government of the United States of America has the right to license these patent rights.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the development and sale of AAV5 based therapeutic products to be delivered to the brain, eyes and liver for treatment of diseases originated from these organs, as claimed in the Licensed Patent Rights.

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before October 14, 2010 will be considered.

**ADDRESSES:** Requests for copy of the patent, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Betty B. Tong, PhD., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 594–6565; Facsimile: (301) 402–0220; E-mail: *tongb@mail.nih.gov.*

**SUPPLEMENTARY INFORMATION:** The technology describes an adeno-associated virus 5 (AAV5), vectors and particles derived from the virus; as well as methods of delivering nucleic acids to a cell by using the AAV5 vectors and particles. More specifically, the

technology provides the methods of delivering nucleic acids to cells of specific regions, tissues and cell types of the central nervous system (CNS); as well as to cells of the lung, by using AAV5 vectors and particles. The specific brain cells that are targeted by AAV5 belong to both non-neuronal/glial cells and neuronal cells, such as cerebellar cells and ependymal cells. The specific lung cells targeted by AAV5 are the apical surfaces of the airway such as alveolar cells.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 7, 2010.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2010–22833 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: The Development of Immunotoxins/Targeted Toxins for the Treatment of Human Cancers

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application 61/241,620 entitled "Development of an Immunotoxin in Which All B–Cell Epitopes Have Been Removed and Which Has High Cytotoxic Activity" [HHS Ref. E–269–2009/0–US–01], U.S. Patent Application 60/969,929 entitled "Deletions in Domain II of Pseudomonas Exotoxin A That Reduce Non-Specific Toxicity" [HHS Ref. E–292–2007/0–US–01], U.S. Patent Application 60/703,798 entitled "Mutated Pseudomonas Exotoxins with Reduced Antigenicity" [HHS Ref. E–262–2005/0–US–01], U.S. Patent Application 60/160,071 entitled "Immunoconjugates Having High Binding Affinity" [HHS Ref. E–139–1999/0–US–01], U.S. Patent Application 60/067,175 entitled "Antibodies, Including Fv Molecules, and Immunoconjugates Having High Binding Affinity for Mesothelin and Methods for Their Use" [HHS Ref. E–021–1998/0–US–01], U.S. Patent Application 60/010,166 entitled "Molecular Cloning of Mesothelin, a Differentiation Antigen Present on Mesothelium, Mesotheliomas and Ovarian Cancers" [HHS Ref. E–002–1996/0–US–01], PCT Application PCT/US97/00224 entitled "Mesothelin Antigen and Methods and Kits for Targeting It" [HHS Ref. E–002–1996/1–PCT–01], U.S. Patent 5,747,654 entitled "Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity" [HHS Ref. E–163–1993/0–US–01], PCT application PCT/US96/16327 entitled "Immunotoxin Containing A Disulfide-Stabilized Antibody Fragment" [HHS Ref. E–163–1993/2–PCT–01], U.S. Patent Application 07/596,291 entitled "A Monoclonal Antibody" [HHS reference E–195–1990/0–US–01], and all continuing applications and foreign counterparts, to Morphotek, Inc. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to:

The use of the MORAb-009–PE–LR/8X immunotoxin for the treatment of mesothelin-expressing cancers, the use of the anti-CD300LF–PE/LR/8X immunotoxin for the treatment of CD300LF-expressing cancers such as acute myelogenous leukemia (AML), and the use of annexin A2-targeted PE–LR/8X toxin for the treatment of annexin A2-expressing cancers such as glioma, ovarian cancer and pancreatic cancer.

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before October 14, 2010 will be considered.

**ADDRESSES:** Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, PhD., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; E-mail: *lambertsond@od.nih.gov.*

**SUPPLEMENTARY INFORMATION:** These inventions concern immunotoxins and targeted toxins, and methods of using the immunotoxins/targeted toxins for the treatment of (a) mesothelin-expressing cancers (such as mesothelioma, ovarian cancer and pancreatic cancer), (b) CD300LF-expressing cancers (such as acute myelogenous leukemia (AML)) or (c) Annexin A2-expressing cancers (such as glioma, ovarian cancer and pancreatic cancer). Several specific immunotoxins/targeted toxins are covered by this technology, including MORAb-009–PE–LR/8X, anti-CD300LF–PE–LR/8X and Annexin A2-targeted PE–LR/8X.

Each of these immunotoxins/targeted toxins comprises (1) a toxin moiety (PE–LR/8X) that is a modified version of the *Pseudomonas* exotoxin A ("PE") and (2) either (a) an antibody fragment domain that is capable of binding to mesothelin, (b) an antibody fragment domain that is capable of binding to CD300LF, or (c) a peptide that is capable of binding to Annexin A2. The toxin moiety been modified in various manners in order reduce immunogenicity, thereby improving the therapeutic value of PE while maintaining its ability to trigger cell death. Since mesothelin, CD300LF and Annexin A2 are each preferentially expressed on certain types of cancer cells, the targeting domains of the immunotoxins/targeted toxins (MORAb-009, anti-CD300LF and Annexin A2 binding peptide) allows the immunotoxins/targeted toxins to selectively bind to certain cancer cells so that only the cancer cells are killed. This results in an effective therapeutic strategy with fewer side effects due to less non-specific killing of cells.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 within thirty (30) days from the date of this published notice.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license.

Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 7, 2010.

**Richard U. Rodriguez,**

*Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2010–22844 Filed 9–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0425]**

### Withdrawal of Approval of New Animal Drug Applications; Chloramphenicol, Lincomycin, Pyrantel Tartrate, and Tylosin Phosphate and Sulfamethazine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of four new animal drug applications (NADAs). In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations to remove portions reflecting approval of these NADAs.

**DATES:** Withdrawal of approval is effective September 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, email: *john.bartkowiak@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** John J. Ferrante, 11 Fairway Lane, Trumbull, CT 06611; International Nutrition, Inc., 7706 "I" Plaza, Omaha, NE 68127; and Feed Service Co., Inc., 303 Lundin Blvd., P.O. Box 698, Mankato, MN 56001 have requested that FDA withdraw approval of the four NADAs listed in table 1 because they are no longer manufactured or marketed:

TABLE 1.

| Sponsor | NADA Number Product (Established Name of Drug) | 21 CFR Cite (Sponsor's Drug Labeler Code) |
|---|---|---|
| John J. Ferrante, 11 Fairway Lane, Trumbull, CT 06611 | NADA 65–137 AMPHICOL–V Capsules (chloramphenicol) | § 520.390b (058034) |
| International Nutrition, Inc., 7706 "I" Plaza, Omaha, NE 68127 | NADA 121–337 INI Swine Ban-Wormer B–9.6 BA. (pyrantel tartrate) | § 558.485 (043733) |
| International Nutrition, Inc., 7706 "I" Plaza, Omaha, NE 68127 | NADA 132–923 LINCO 8/LINCO 20 (lincomycin) | § 558.325 (043733) |
| Feed Service Co., Inc., 303 Lundin Blvd., P.O. Box 698, Mankato, MN 56001 | NADA 138–342 TYLAN 5 Sulfa-G Premix (tylosin and sulfamethazine) | § 558.630 (030841) |

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADAs 65–137, 121–337, 132–923, and 138–342, and all supplements and amendments thereto, is hereby withdrawn, effective September 24, 2010.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these NADAs.

Dated: September 1, 2010.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 2010–22809 Filed 9–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3315–EM; Docket ID FEMA–2010–0002]**

### Massachusetts; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the Commonwealth of Massachusetts (FEMA–3315–EM), dated September 2, 2010, and related determinations.

**DATES:** Effective Date: September 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 2, 2010, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Massachusetts resulting from Hurricane Earl beginning on September 1, 2010, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* ("the Stafford Act"). Therefore, I declare that such an emergency exists in the Commonwealth of Massachusetts.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any

Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this declared emergency:

Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester Counties for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010–22853 Filed 9–13–10; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2010–0002; Internal Agency Docket No. FEMA–3314–EM]**

### North Carolina; Amendment No. 2 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of North Carolina (FEMA–3314–EM), dated September 1, 2010, and related determinations.

**DATES:** *Effective Date:* September 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective September 4, 2010.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010–22852 Filed 9–13–10; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2010–0002; Internal Agency Docket No. FEMA–1933–DR]**

### Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1933–DR), dated August 11, 2010, and related determinations.

**DATES:** *Effective Date:* September 7, 2010.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 11, 2010.

Calumet County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010–22854 Filed 9–13–10; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Customs and Border Protection

**[Docket No. USCBP–2007–0099; CBP Dec. 10–31]**

### Testing Method of Pressed and Toughened (Specially Tempered) Glassware

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of method CBP uses to test pressed and toughened (specially tempered) glassware for tariff classification purposes.

**SUMMARY:** This document adopts modifications to the test method currently applied by U.S. Customs and Border Protection ("CBP") for the testing of pressed and toughened (specially tempered) glassware, as set forth in Treasury Decision (T.D.) 94–26 which was published in the **Federal Register** on March 22, 1994. This document sets forth revised criteria for interpreting the results obtained from the cutting test for opaque glassware and provides an interpretation of breakage for that test. In addition, this document reinstates a previously used testing method, the center punch test, and provides a

description of the center punch apparatus to be used for that test. The final CBP test method for pressed and toughened (specially tempered) glassware for tariff classification purposes is set forth in its entirety in this document.

**DATES:** CBP will begin applying this revised test method on glassware entered, or withdrawn from warehouse, for consumption effective October 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Margaret Chinn, Office of Information and Technology, Laboratories and Scientific Services, (202) 344–1566; Stephen Cassata, Office of Information and Technology, Laboratories and Scientific Services, (202) 344–1309.

**SUPPLEMENTARY INFORMATION:**

**Background**

This document sets forth modifications to the criteria utilized by U.S. Customs and Border Protection ("CBP") to test certain glassware articles to determine whether they are "pressed and toughened (specially tempered)" for tariff classification purposes under the Harmonized Tariff Schedule of the United States ("HTSUS"). The glassware articles subject to these testing procedures are generally imported into the United States under subheadings 7013.28.05, 7013.37.05, 7013.42.10, 7013.49.10, and 7013.99.20, HTSUS. Articles of "safety glass, consisting of toughened (tempered) or laminated glass" that are normally imported under heading 7007, HTSUS (e.g., architectural plate glass and vehicle windshields), are not within the purview of this final notice.

Information regarding the apparatus used, glass sample preparation, and the methods employed by CBP to test glassware articles to determine whether they are pressed and toughened (specially tempered) was previously set forth in the **Federal Register** (59 FR 13531, March 22, 1994; see also, 59 FR 16895, April 8, 1994, correcting "T.D. 94–25" to "T.D. 94–26"). Under T.D. 94–26, photographic equipment, polariscopes, tile saws (or similar table-mounted circular saws), or other apparatus and supplies, such as calipers, ovens, and water baths, can be used to test subject glassware articles. With respect to sample preparation, T.D. 94–26 states that a representative number of samples should be analyzed but recognizes the possibility that only one sample may be available for testing.

The method to be used for the testing of pressed and toughened (specially tempered) glassware under T.D. 94–26 consists of three tests. They are the "macroscopic analysis," "thermal shock test," and "evaluation of temper." The evaluation of temper test consists of a polariscopic examination for transparent or translucent glassware and a cutting test for opaque glassware. The proposed modification of the test method was limited to the cutting test for opaque glassware.

**Proposed Modifications**

On January 9, 2008, CBP published a notice in the **Federal Register** (73 FR 1640) which proposed modifications to the method applied for the testing of pressed and toughened (specially tempered) glassware as set forth in T.D. 94–26 and solicited public comments. The notice proposed modifications to the cutting test for opaque glassware but did not propose changes to the testing procedures used for the macroscopic analysis test, thermal shock test, and polariscopic examination aspect of the evaluation of temper test. The notice also proposed to reinstate the "center punch test" and provided a description of the center punch apparatus that would be used for the proposed test. Finally, the notice proposed to allow for the optional use of additional tests by CBP that would be used only to verify the results obtained from the other testing procedures. The modifications set forth in the January 9, 2008, notice are described in greater detail below.

**Proposed Changes to Cutting Test for Opaque Glassware**

The cutting test for opaque glassware is used for opaque glassware and translucent glassware that cannot be examined polariscopically because they do not transmit adequate polarized light. In the notice of January 9, 2008, it was proposed to revise the criteria used to interpret the results obtained from the cutting test for opaque glassware. In addition, it was proposed to add an interpretation of breakage in the test because the guidelines set forth in T.D. 94–26 did not clearly explain how breakage should be interpreted. Under the proposal, CBP would interpret the test such that the presence of "some" dicing or crazing would be sufficient to determine that a glass article has been specially tempered for tariff classification purposes. Under this standard, "some" would be considered to be any diced, crazed (gravel that remains tenuously in contact with neighboring pieces), or graveled (presence of small cubes of approximately equal dimensions on all six sides) fragment yielded from the cut sample that is more than just a fugitive diced, crazed, or graveled fragment. In addition, it was proposed to remove the references to tempered soda lime, borosilicate, and fluorosilicate glass that are currently in the test because the composition of the glass is not relevant for testing purposes.

**Proposal to Add Center Punch Test**

The notice of January 9, 2008, also proposed to reinstate the center punch test. It was noted in the proposal that it is dangerous for an analyst to perform the cutting test on a sample that is less than five inches in diameter or five inches wide and that it would be preferable to use the center punch test in these cases. The center punch apparatus to be used to perform the test would be a slender tool approximately 8 to 12 inches in length with one end tapered to a point. The tool would be long enough to allow for its insertion into tall-form tumblers and other articles of similar shape while permitting the nonpointed end to extend above the rim. This would be necessary for handling and safety purposes when performing the center punch test. The pointed end of the center punch would not be so sharp so as to chip the glassware on contact without applying pressure.

In order to perform the center punch test under the proposal, a sample would initially be set on a solid and level surface. An analyst would then place the pointed end of the center punch vertically against the inside center bottom or heel of the article. The analyst would strike the dull end of the punch with a hammer, using blows of gradually increasing severity until breakage occurs. The breakage pattern, approximate number, and relative shape and size of the fragments would then be noted. Thereafter, the breakage pattern and/or typical fragments would be photographed. It would only be necessary for the broken sample to exhibit "some" dicing, crazing, or graveling in order to be considered tempered for CBP's classification purposes. "Some" would be considered to be any diced, crazed, or graveled fragments yielded by the broken sample that are more than just fugitive diced, crazed, or graveled fragments.

**Proposal to Add Option to Use Additional Tests**

In addition, the notice of January 9, 2008, proposed to provide for the optional use of additional tests by CBP. The additional tests would be used by CBP only to verify the results obtained from the other testing procedures. It was stated that the additional tests would facilitate the overall testing process by ensuring that the results obtained from

the other testing procedures are accurate.

**Discussion of Comments**

Comments were solicited in the notice of January 9, 2008, and the comment period closed on March 17, 2008. One commenter responded during this time period on behalf of two clients, a manufacturer and separate importer of tempered glassware. The commenter submitted two letters, a set of photographs, and a series of ten short videos. A description of the comments and other material in the submission, as well as CBP's related analysis, follows.

*Comment:*

The commenter asserts that the standard proposed for the testing of pressed and toughened (specially tempered) glassware set forth in the notice of January 9, 2008, would produce erroneous results and would not meet certain parameters established by the courts for testing methodology.

*CBP's Response:*

The commenter submitted photographs and videos in an attempt to demonstrate that CBP's proposed testing method for the testing of pressed and toughened (specially tempered) glassware would produce erroneous results. As discussed further below, however, CBP does not find the commenter's submission persuasive in this regard because the proposed modifications to the testing method would actually introduce a higher degree of accuracy into the testing process. In addition, CBP believes that this testing method would withstand judicial scrutiny because the generally accepted methods in the standard are accurate, testable, and have been subject to peer review and publication.

*Comment:*

The commenter states that the center punch test is not a useful or reliable test for tempered glassware and opposes its reinstatement by CBP. The commenter expressed its concern that CBP did not make clear in the notice of January 9, 2008, whether the center punch test would be used in lieu of, or in addition to, the cutting test. Moreover, if the center punch is intended to be used in addition to the cutting test, the commenter questions the relative weight CBP will assign to each test in determining whether an item is considered tempered.

*CBP's Response:*

CBP's position is that the center punch test is useful and reliable, and CBP has determined that its reinstatement into the method for the testing of pressed and toughened (specially tempered) glassware is necessary. In support of this determination, CBP recognizes that the reinstatement of the center punch test will provide CBP analysts with a test that can be used in cases where the cutting test yields inconclusive results or when it would be dangerous to use the cutting test because of the dimensions of the sample.

As noted above, one instance where the center punch test will be used is when the cutting test yields inconclusive results. In this situation, the results of the center punch test will be interpreted in conjunction with the results of the cutting test in order to make the correct classification determination. CBP believes this additional test is required because the CBP Laboratory occasionally tests samples that break into several large pieces when subjected to the cutting test. Without the benefit of a second test to confirm whether the tested glassware is actually pressed and toughened (specially tempered) in these cases, the analyst is constrained under the current standard to classify the article as "tempered" even though there may be doubts as to whether the article is actually tempered. Accordingly, the revised standard set forth in this document will afford the CBP analyst with the opportunity to utilize the center punch test in cases where the results of the cutting test are inconclusive (i.e., if the sample breaks into several large pieces when subjected to the cutting test).

The second instance where the center punch test will be employed under the proposed revised method is cases where an article is too small to safely analyze with the cutting test. CBP believes this is necessary because the integrity of a tempered glassware article can fail during a cutting test, potentially resulting in serious injury to the CBP analyst. Accordingly, the revised method will afford the analyst the opportunity to utilize the center punch test on articles considered "too small" to safely perform a cutting test. The revised method will make clear that glassware articles considered too small to analyze safely with a cutting test will be those that are smaller than five inches in diameter or five inches wide. If a glassware article is smaller than five inches in diameter or five inches wide and the analyst chooses to use the center punch test, a cutting test will not be performed on the article and the results obtained from the center punch test will be considered independently. Results obtained from the center punch test in these situations will be interpreted in the same manner as results obtained from the cutting test.

*Comment:*

The commenter states that the proposed breakage analysis for tempered glassware subjected to the cutting or center punch test (particularly fluorosilicate which has characteristics unique to its crystalline structure) is too subjective and in many instances would result in an erroneous conclusion that a tempered article is not tempered. With respect to the proposed breakage analysis, the commenter specifically states that both annealed and tempered fluorosilicate plates which are subjected to the center punch test break into small pizza-shaped pieces, the only real difference being that the tempered plates take more force to break and yield somewhat smaller pizza-shaped pieces. In addition, other types of articles may react differently when subjected to the center punch test. For example, a tempered mug which is subjected to the center punch test may break into irregular pieces smaller than those of an annealed mug.

The commenter indicates that their client has performed repeated center punch tests on the full range of fluorosilicate articles which they manufacture and have confirmed that other than the differences in the appearance of the pieces noted above, they did not observe dicing or crazing of tempered fluorosilicate glass. The commenter submitted various photographs and ten short videos in order to demonstrate the difficulty associated with classifying glass as tempered or non-tempered based on breakage patterns. The commenter states that the photographs depict annealed and tempered fluorosilicate (opal) and soda lime plates subjected to the center punch test. The commenter indicates that of the ten videos submitted, two are of the center punch test performed on tempered fluorosilicate glass plates; two are of the center punch test performed on annealed fluorosilicate glass plates; one is of the center punch test performed on a tempered soda lime glass plate; one is of the center punch test performed on an annealed soda lime glass plate; one is of a hammer striking a tempered fluorosilicate plate; one is of a hammer striking an annealed fluorosilicate plate; one is of the center punch test performed on a tempered fluorosilicate mug; and one is of the center punch test performed on an annealed fluorosilicate mug.

The commenter believes that the photographs and videos prove that the breakage differences resulting when the

center punch test is performed on tempered versus annealed glass can be so subtle as to be virtually non-existent. The commenter specifically notes that tempered fluorosilicate glass plates will not exhibit any dicing, graveling, or crazing when cut or center punched. In addition, the commenter states that dicing, crazing, or graveling are characteristics that are generally exhibited in heat-treated flat glass, not flat glassware. The commenter contends that because tempered dinnerware is very different in shape and thickness, dicing, crazing or graveling does not ordinarily occur in soda lime glass dinnerware and never occurs in tempered fluorosilicate glass dinnerware. Moreover, the commenter states that there is no evidence that glass dinnerware should dice, craze, or gravel when cut.

*CBP's Response:*

CBP disagrees with the commenter's statement that the analysis of breakage patterns for tempered glassware subjected to the cutting or center punch tests is too subjective to be deemed reliable. In addition, CBP notes that some degree of temper must be visually evident for a glassware article to be considered "toughened (specially tempered)" and also maintains that a tempered glassware article will craze, dice, or gravel when broken.

CBP notes that the degree of temper in glassware is roughly equivalent to the strength increase of the glass produced by the compression on the outside of the article and that this increase in compression is compensated for by a greater amount of internal tension. CBP's view is that, at some point, the appearance of dicing indicates a certain amount of achievement of strength through tempering and that progressively smaller fragments corresponds to even higher levels of temper. The factor affecting whether an interior crack branches into other fractures is principally the state of the stress at those interior points through which the crack propagates. CBP's criterion for "toughened (specially tempered)" translates roughly into the requirement that the state of tensile strength in the interior of the article due to tempering should be high enough to produce this branching which is exhibited by visible dicing, crazing, or graveling during breakage through at least part of the article. In this respect, whether it is flat glass or dinner glassware, it is a common axiom that a tempered glassware article will craze, dice, or gravel when it breaks.

With respect to the photographic and video evidence submitted by the commenter, CBP initially agrees that in some cases the tempered glassware depicted in the submissions does not appear to craze, dice, or gravel when impacted with a center punch. However, it is noted that no evidence was submitted to demonstrate that the glassware subjected to testing in the submissions was, in fact, tempered. In addition, CBP notes that the experiments were not technically accurate because only a hammer was used in some of the tests. Accordingly, the criteria for interpreting breakage for the cutting test for opaque glassware and the reinstated center punch test, as set forth in the January 9, 2008, notice, will not be eliminated from the revised method for the testing of pressed and toughened (specially tempered) glassware.

*Comment:*

The commenter states that CBP's proposal to use additional tests to verify the results of the other tests is improper because tests that are never disclosed or described cannot be properly scrutinized. In addition, the commenter states that CBP has not explained what weight would be assigned to the additional tests for purposes of applying the testing methodology.

*CBP's Response:*

CBP agrees that the verification of additional test results would be problematic for the reasons the commenter provides. Accordingly, additional tests will not be used to verify the results of the other tests, as reflected in the revised method to be applied for the testing of pressed and toughened (specially tempered) glassware which is set forth below.

**Conclusion**

After analyzing the comments and other material contained in the submission discussed above and further review of the matter, CBP has decided to adopt, except for the use of additional tests as discussed in the comment section above, the modifications to the test method used by CBP for the testing of pressed and toughened (specially tempered) glassware as proposed in the notice of January 9, 2008 (73 FR 1640) for the cutting test for opaque glassware and for the reinstatement of the center punch test for articles less than five inches in diameter and for inconclusive results from the cutting test. In addition, this document inserts a new section, "Scope and Field of Application", into the test method. This new section merely clarifies that the method employs macroscopic analysis, thermal shock testing, and evaluation of temper. This new section also clarifies that pressed and toughened (specially tempered) glassware articles are normally imported under subheadings 7013.28.05, 7013.37.05, 7013.42.10, 7013.49.10, and 7013.99.20, HTSUS, and that articles normally imported under heading 7007, HTSUS, such as windshields, are not within the purview of the method. Finally, this document makes other minor editorial changes to the test method. The revised test method, set forth in its entirety below, will be employed by CBP on glassware entered, or withdrawn from warehouse, for consumption on or after 30 days from the date of publication of this document in the **Federal Register.**

**TESTING METHOD OF PRESSED AND TOUGHENED (SPECIALLY TEMPERED) GLASSWARE**

*SAFETY PRECAUTION:* CERTAIN PROCEDURES DESCRIBED IN THIS METHOD POSE A POTENTIAL HAZARD TO PERSONNEL FROM THE PROXIMITY TO OR HANDLING OF BREAKING OR BROKEN GLASS. THIS METHOD SHALL NOT BE UNDERTAKEN WITHOUT SUPERVISORY CONCURRENCE THAT ADEQUATE PRECAUTIONS FOR PERSONAL SAFETY HAVE BEEN IMPLEMENTED.

*SCOPE AND FIELD OF APPLICATION*

This method employs macroscopic analysis, thermal shock testing, and evaluation of temper to determine if a glassware item has been pressed and toughened (specially tempered) for U.S. Customs and Border Protection (CBP)'s tariff classification purposes.

These glassware articles are normally imported under subheading numbers 7013.28.05, 7013.37.05, 7013.42.10, 7013.49.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Articles of "safety glass, consisting of toughened (tempered) * * * glass," normally imported under heading 7007 of the HTSUS, (e.g., vehicle windshields) are not within the purview of this method.

**1. APPARATUS:**

*Photographic Equipment:*

A camera (equipped with flash or supplemented by adequate lighting) is recommended for making a permanent record of unusual samples and test results.

*Polariscope:*

The basic instrument consists of a light source, a polarizer, and an analyzer. The addition of a full-wave retardation, or tint, plate permits observation of color-enhanced stress patterns. Ideally, the working space, or

distance between the polarizer and the analyzer, should be large enough to accommodate samples ranging up to eight inches in height.

*Tile Saw (or Similar Table-Mounted Circular Saw):*

A tile saw having a cutting head which can be adjusted horizontally and vertically and which is equipped with an 8 to 12 inch diameter continuous rim diamond blade designed for wet cutting glass is adequate for testing opaque glassware articles.

*Center Punch:*

The center punch is a slender tool having one end tapered to a point. The tool should be approximately 8″; to 12″ in length to permit insertion into tall-form tumblers and other articles of similar shape while the nonpointed end extends above the rim. This is necessary for ease of handling and for safety while performing the center punch test. The pointed end of the center punch should not be sufficiently sharp so as to chip the glassware on contact without the application of pressure.

*Other Apparatus and Supplies:*

The method requires various common laboratory articles such as a caliper or similar device for measuring the diameter of the opening and the maximum inside diameter of the sample, an oven, a water bath, and other equipment and supplies. Appropriate safety devices and personal protective equipment are also required.

**2. PREPARATION OF THE SAMPLE**

When available a representative number of samples should be analyzed. However, it is recognized that for any of several reasons, e.g., cost of the item, only a limited number of samples may be submitted for analysis. The possibility exists that only one sample may be available for testing.

**3. ANALYSIS PROCEDURES**

The following procedures may be conducted in whatever order the analyst deems is appropriate for the particular sample being examined. The test protocol should be terminated at the point that a sample fails to meet any of the key criteria, i.e., "pressed", "toughened", or "specially tempered."

*Evaluation for Determination if an Article Has Been Pressed*

*3.1 Macroscopic Analysis:*

*3.1.1 Visual Inspection:*

Inspect the sample for the following:

- Identifying marks, labels, sizes, etc., especially those that may have been caused by a push-up valve and a mold that have been pressed into the article;
- The style (stemware, tumbler, bowl, plate, etc.);
- The presence of ribs, handles, flutes, etc.;
- The size of the rim or opening, if applicable;
- The size of the most bulbous portion of the article;
- Any other unusual characteristics (e.g., chips, cracks).

Interpretation of Visual Inspection Results: Characteristics such as mold marks, ribs, handles, and flutes are often indicative of a pressed rather than blown glass article.

*3.1.2 Dimensional Measurement (Applies Only to Stemware, Tumblers, Bowls, etc.):*

Using a caliper or similar device, measure the minimum diameter of the mouth, opening, or upper rim of the sample. With the same device, measure the maximum inside diameter. Record both measurements.

Interpretation of Dimensional Measurement Results: A sample having a maximum inside diameter greater than the minimum diameter of the mouth, opening, or upper rim is not likely to have been "pressed."

Interpretation of the Macroscopic Analysis Test: The analyst is advised to consider the overall features of the article and the dimensional analysis test results in determining that an article has been "pressed." If the results show that the sample is not "pressed", the testing sequence for this sample should be terminated at this point.

*Evaluation for Determination if an Article Has Been Toughened (Specially Tempered)*

*3.2 Thermal Shock Test:*

- Heat the sample(s) in an oven to 160 °C for 30 minutes.
- Remove one sample from the oven and immediately immerse it in a water bath set at 25 °C. This results in a 135 °C difference in temperature. [Note: Reasonable alternate oven and water bath settings up to ± 10 °C are acceptable as long as the 135 °C difference in temperature is maintained.]

Interpretation of Thermal Shock Test Results: Annealed glassware and inadequately or partially tempered glassware will generally not survive this test of durability or toughness. If breakage occurs, the sample is not "toughened" for CBP purposes. Record the findings, and terminate the analysis.

*3.3 Evaluation of Temper:*

*3.3.1 The Polariscopic Examination (For Transparent or Translucent Articles):*

This method for the qualitative evaluation of temper in glassware should be conducted only on transparent or translucent articles. This method is not applicable to opaque items or to articles which have been tempered by a process other than thermal tempering. In addition, some translucent articles will not transmit enough polarized light to permit the observation of stress patterns; these items should be evaluated for temper using the Cutting Test.

- Place the full-wave retardation plate (tint plate) between the polarizer and the analyzer. The polarized light must pass through both the sample and the retardation plate for the color-enhanced polariscopic pattern to be observed through the analyzer. Position the retardation plate in direct contact with the polarizer or, alternatively, just in front of the analyzer.
- Turn on the light source.
- Evaluate the stress in the bottom of the intact article by placing its bottom surface in contact with the polarizer so that the polarized light passes perpendicularly through the bottom surface, or as close to perpendicularly as possible, depending upon the article's shape. [This positioning does not work well with stemware because of color patterns caused by the stem itself. With these items, it will be necessary to hold the glass at a slight angle to view the base and the bowl separately.]
- Evaluate the stress in the sides of the intact article, especially near the rim or edge, by positioning the article so that the polarized light passes perpendicularly through the sides near the rim, or as close to perpendicularly as possible, depending upon the article's shape. Observation of the stress patterns in the sidewall and rim areas should be made while viewing through a single thickness of glass. For some items, especially stemware, tumblers, and mugs, this will require holding the article at a slight angle to the polarizer (open end raised slightly).

Interpretation of the Polariscopic Examination: Thermal tempering of glassware involves heating to the softening point followed by rapid cooling. The surfaces cool first and reach a temperature where they become rigid. With further cooling, the interior or core tries to shrink but is prevented from doing so by the rigid surface layers. This results in the surfaces being locked into a state of high compression and the interior locked into compensating tension.

When polarized light travels through a stressed material, they divide into slow and fast fronts. As a result of the difference in speed of the slow and fast rays, interferences occur and a pattern of colors is observed. These colors can

be used to evaluate the stresses in the article. As the stress increases, the observed color changes to reflect the amount of stress. The color changes follow a rigorous sequence as the stress-induced retardation, or distance between the fast and slow rays, increases. In low-stress areas, black and shades of gray are seen. Evaluation of low stress is simplified by using a color-enhancing retardation or tint plate which adds a shift of one fringe order, or 565 nm, in the color pattern throughout the observed field. With the tint plate in place, even low and moderately stressed areas will exhibit a contrasting color effect.

Annealed glassware will exhibit a uniform coloration of the polarized light passing through it; there will be essentially no change from the background. Tempered articles will exhibit non-uniform coloration of the polarized light on the bottom surface and sidewalls and bands of color parallel to the rim or lip. [Note: With highly colored articles, it may be helpful to conduct the polariscopic exam without the tint plate. There will be no color enhancement, but the gray to black interference patterns should be readily discernible in tempered articles.]

If the sample passes the Thermal Shock Test and shows evidence of full-surface tempering (as opposed to rim-tempering or partial tempering) when examined polariscopically, the sample has been "toughened (specially tempered)" for CBP purposes.

*3.3.2 The Cutting Test for Opaque Glassware*

This test is applicable to opaque articles and to those translucent articles which cannot be examined polariscopically because of inadequate transmission of the polarized light.

- Ensure that the saw is equipped with a continuous rim diamond blade designed for wet cutting glass.
- Adjust the cutting head of the saw vertically and horizontally, as necessary, to accommodate the glassware article.
- Be sure the water supply to both sides of the diamond-rimmed blade is adequate.
- Turn on the saw.
- While holding or otherwise securing the article to prevent twisting and binding during the cutting, slowly and gently move the article into contact with the blade.
- Proceed with the cutting.
- Note the breakage pattern, number, and relative shape and size of the fragments (indicate this without making an actual count). Photograph the breakage pattern and/or typical fragments, if indicated.

Interpretation of the Cutting Test: Annealed (non-tempered) glassware will readily accept the diamond-rimmed blade and will be cleanly cut in half. Tempered glass, on the other hand, will break into pieces when cut. The broken pieces will need to exhibit some dicing, crazing (gravel remaining tenuously in contact with neighboring pieces) or graveling. "Some" will be considered to be any diced, crazed or graveled fragments yielded by the broken sample that is more than just a fugitive diced, crazed or graveled fragment. The word "gravel" is intended to be synonymous with "diced pieces" and implies the presence of small cubes of roughly equal dimensions on all six sides. The extent of cutting needed to induce breakage may vary from item to item, but in no event will tempered articles be cleanly cut in half by the diamond-rimmed blade.

*3.3.3 Center Punch Test*

In the event that the Cutting Test is inconclusive (i.e., if the sample breaks into several large pieces when subjected to the cutting test) or if an article is too small (less than 5″ in diameter) to be safely analyzed by the Cutting Test, the analyst has the option to apply the Center Punch Test to the article. The Center Punch Test should be performed as follows:

- Set the sample to be tested on a solid, level surface.
- Place an upended cardboard box over the item to be tested. The box should be of sufficient size so that the entire article is covered. The box should be altered such that there is a hole in the center which is large enough to admit the shank of a center punch.
- Place the pointed end of the center punch, vertically, against the inside center bottom or heel.
- Strike the dull end of the punch with a hammer, using blows of gradually increasing severity, until breakage occurs.
- Note the breakage pattern, number, and relative shape and size of fragments (indicate this without making an actual count). Photograph the breakage pattern and/or typical fragments, if indicated.

Interpretation of Center Punch Test Results: In order to be considered "tempered" for CBP purposes, it is only necessary for the broken sample to exhibit some dicing, crazing or graveling. "Some" will be considered to be any diced, crazed or graveled fragments yielded by the broken sample that are more than just fugitive diced, crazed or graveled fragments. The word "gravel" is intended to be synonymous with "diced pieces" and implies the presence of small cubes of roughly equal dimensions on all six sides.

"Toughened (specially tempered)" glassware will require considerably more force to break than ordinary glassware with the center punch test and, when it breaks, some graveling or crazing will be observed. Neither graveling nor crazing will be observed in ordinary glassware.

Powder and splinters will occasionally be observed in samples of "toughened (specially tempered)" glassware. Also, few, if any, of these samples will be reduced entirely to gravel; larger fragments will remain. However, these large fragments will seldom be exceptionally pointed or jagged and broken edges, especially on diced pieces, will be reasonably dull.

The stem and base of the stemware styles seldom disintegrate. The most common breakage pattern for stemware is characterized by a tack-shaped fragment consisting of the base and a portion of the stem remaining intact. The tip of the stem portion should be reasonably dull.

A sample that passes the Thermal Shock Test and shows evidence of tempering per the guidance given above for the Cutting Test and/or Center Punch Test has been "toughened (specially tempered)" for CBP's tariff classification purposes.

Dated: September 9, 2010.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services, U.S. Customs and Border Protection.*

[FR Doc. 2010–22826 Filed 9–13–10; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF THE INTERIOR

### Council of the Inspectors General on Integrity and Efficiency

### Senior Executive Service Performance Review Board Membership

**AGENCY:** Council of the Inspectors General on Integrity and Efficiency.

**ACTION:** Notice.

**SUMMARY:** This notice sets forth the names and titles of the current membership of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Performance Review Board as of October 1, 2010.

**DATES:** *Effective Date:* October 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Individual Offices of Inspectors General at the telephone numbers listed below.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Inspector General's Act of 1978, as amended, created the Offices of Inspectors General as independent and objective units to conduct and supervise audits and investigations relating to Federal programs and operations. The Inspector General Reform Act of 2008, established the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well trained and highly skilled workforce in the Offices of Inspectors General. The CIGIE is an interagency council whose executive chair is the Deputy.

**II. CIGIE Performance Review Board**

Under 5 U.S.C. 4314(c)(1)–(5), and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the Council of the Inspectors General on Integrity and Efficiency Performance Review Board, as of October 1, 2009, are as follows:

*Agency for International Development*

Phone Number: (202) 712–1150.

CIGIE Liaison-Thereasa L. Lyles, (202) 7121 393.

Michael G. Carroll—Deputy Inspector General.

Joseph Farinella (SFS)—Assistant Inspector General for Audit.

Melinda Dempsey—Deputy Assistant Inspector General for Audit.

Howard I. Hendershot—Assistant Inspector General for Investigations.

Alvin A. Brown—Assistant Inspector General, Millennium Challenge Corporation.

Lisa Goldfluss—Legal Counsel.

*Department of Agriculture*

Phone Number: (202) 720–8001.

CIGIE Liaison-Cheryl Viani, (202) 720–8001.

David R. Gray—Deputy Inspector General.

Robert W. Young—Special Assistant to the Inspector General for the Recovery Act.

Gilroy Harden—Assistant Inspector General for Audit.

Rod DeSmet—Deputy Assistant Inspector General for Audit.

Tracy A. LaPoint—Deputy Assistant Inspector General for Audit.

Karen L. Ellis—Assistant inspector General for Investigations.

Kathy C. Horsley—Deputy Assistant Inspector General for Investigations.

Suzanne M. Murrin—Assistant Inspector General for Management.

*Department of Commerce*

Phone Number: (202) 482–4661.

CIGIE Liaison-Lisa Allen, (202) 482–5422.

Wade Green, Jr. Counsel to the Inspector General.

Judith J. Gordon—Associate Deputy Inspector General.

Ann E. Eilers—Principal Assistant Inspector General for Audit and Evaluation.

Allen Crawley—Assistant Inspector General for Systems Acquisition and IT Security.

Ronald C. Prevost—Assistant Inspector General for Economic and Statistical Program Assessment.

Scott Berenberg—Assistant Inspector General for Investigations.

Richard C. Beitel, Jr.—Assistant Inspector General for Whistleblower Protection.

*Department of Defense*

Phone Number: (703) 604–8324.

CIGIE Liaison—John R. Crane, (703) 604–8324.

Michael Child—Chief of Staff.

James Burch—Deputy Inspector General for Investigations.

Patricia Brannin—Deputy Inspector General for Intelligence.

Donald Horstman—Deputy Inspector General for Administrative Investigations.

John Crane—Assistant Inspector General for Communications and Congressional Liaison.

Anna Gershman—Acting Assistant Inspector General for the Office of Professional Responsibility.

*Department of Education*

Phone Number: (202) 245–6900.

CIGIE Liaison—Ten Clark, (202) 245–6340.

Mary Mitchelson—Deputy Inspector General.

Wanda Scott—Assistant Inspector General for Evaluations, Inspections and Management Services.

Keith West—Assistant Inspector General for Audit Services.

Patrick Howard—Deputy Assistant Inspector General for Audit Services.

William Hamel—Assistant Inspector General for Investigative Services.

Charles Coe—Assistant Inspector General for Information Technology and Computer Crimes Investigation.

Marta Erceg—Counsel to the Inspector General.

*Department of Energy*

Phone Number: (202) 586–4393.

CIGIE Liaison—Juston Fontaine, (202) 586–1959.

John Hartman—Assistant Inspector General for Investigations.

Rickey Hass—Deputy Inspector General for Audit Services.

Sanford Parnes—Counsel to the Inspector General.

George Collard—Assistant Inspector General for National Security and Energy Audits.

*Department of Health and Human Services*

Phone Number: (202) 619–3148.

CIGIE Liaison—Sheri Denkensohn, (202) 205–9492 and Elise Stein, (202) 619–2686.

Joseph J. Green—Assistant Inspector General for Financial Management and Regional Operations.

Paul R. Johnson—Assistant Inspector General for Management and Policy (Chief Operating Officer).

Donald E. Meeks—Assistant Inspector General for Investigations.

Stuart E. Wright—Deputy Inspector General for Evaluation and Inspections.

*Department of Homeland Security*

Phone Number: (202) 254–4100.

CIGIE Liaison—Denise S. Johnson, (202) 254–4100.

Charles K. Edwards—Deputy Inspector General.

Matt Jadacki—Assistant Inspector General for Emergency Management Oversight.

Mark McLachlan—Deputy Assistant Inspector General for Emergency Management Oversight.

Richard N. Reback—Counsel to the Inspector General.

Anne L. Richards—Assistant Inspector General for Audits.

Edward M. Stulginsky—Deputy Assistant Inspector General for Audits.

Carlton I. Mann—Assistant Inspector General for Inspections.

Thomas M. Frost—Assistant Inspector General for Investigations.

James Gaughran—Deputy Assistant Inspector General for Investigations.

Frank Deffer—Assistant Inspector General for Information Technology.

Charles K. Edwards—Acting Assistant Inspector General for Management.

*Department of Housing and Urban Development*

Phone Number: (202) 708–0430.

CIGIE Liaison—Helen Albert, (202) 708–0614, Ext. 8187.

James A. Heist—Assistant Inspector General for Audit.

John McCarty—Deputy Assistant Inspector General for Inspections and Evaluations.

Lester Davis—Deputy Assistant Inspector General for Investigations.

Randy McGinnis—Deputy Assistant Inspector General for Audit.

Brenda Patterson—Deputy Assistant Inspector General for Audit.

Helen Albert—Deputy Assistant Inspector General for Management and Policy.

*Department of the Interior*

Phone Number: (202) 208–5745.

CIGIE Liaison—Deborah Holmes, (202) 208–5745.

Stephen Hardgrove—Chief of Staff.

Kimberly Elmore—Assistant Inspector General for Audits, Inspections and Evaluations.

Robert Romanyshyn—Deputy Assistant Inspector General for Financial Audits.

John Dupuy—Assistant Inspector General for Investigations.

Renee Pettis—Assistant Inspector General for Management.

Eddie Saffarinia—Assistant Inspector General for Information Technology.

Bruce Delaplaine—General Counsel.

Roderick Anderson—Deputy Assistant Inspector General for Management.

Robert Knox—Assistant Inspector General for Recovery Oversight.

*Department of Justice*

Phone Number: (202) 514–3435.

CIGIE Liaison—Cynthia Schnedar, (202) 514–3435.

Cynthia Schnedar—Deputy Inspector General.

Raymond J. Beaudet—Assistant Inspector General for Audit.

Carol F. Ochoa—Assistant Inspector General for Oversight and Review.

Gregory T. Peters—Assistant Inspector General for Management and Planning.

Thomas F. McLaughlin—Assistant Inspector General for Investigations.

Michael D. Gulledge—Assistant Inspector General for Evaluation and Inspections.

Caryn A. Marske—Deputy Assistant Inspector General for Audit.

George L. Dorsett—Deputy Assistant Inspector General for Investigations.

*Department of Labor*

Phone Number: (202) 693–5100.

CIGIE Liaison—Christopher Seagle, (202) 693–5231.

Daniel R. Petrole—Acting Inspector General.

Nancy F. Ruiz de Gamboa—Assistant Inspector General for Management and Policy.

Thomas F. Farrell—Assistant Inspector General for Labor Racketeering and Fraud Investigations.

Elliot P. Lewis—Assistant Inspector General for Audit.

Michael A. Raponi—Deputy Assistant Inspector General for Audit.

Richard Clark—Deputy Assistant Inspector General for Labor Racketeering and Fraud Investigations.

Asa E. Cunningham—Assistant Inspector General for Inspections and Special Investigations.

*Department of State and the Broadcasting Board of Governors*

Phone Number: (202) 663–0340.

CIGIE Liaison—Michael Wolfson, (703) 284–2710.

Robert B. Peterson—Assistant Inspector General for Inspections.

Evelyn R. Klemstine—Deputy Assistant Inspector General for Audits.

*Department of Transportation*

Phone Number: (202) 366–1959.

CIGIE Liaison—Nathan P. Richmond, (202) 366–1959.

Calvin L. Scovel III—Inspector General.

Ann M. Calvaressi Barr- Deputy Inspector General.

Brian A, Dettelbach—Assistant Inspector General for Legal, Legislative, and External Affairs.

Susan L. Dailey—Assistant Inspector General for Administration.

Lou E. Dixon—Principal Assistant Inspector General for Auditing and Evaluation.

Jeffrey B. Guzzetti—Assistant Inspector for Aviation and Special Program Audits.

Mitchell L. Behm—Assistant Inspector General for Amtrak, High Speed Rain and Economic Analysis.

Matthew E. Hampton—Deputy Assistant Inspector General for Aviation and Special Program Audits.

Rebecca C. Leng—Assistant Inspector General for Financial and Information Technology Audits.

Joseph W. Come—Assistant Inspector General for Surface and Maritime Programs.

Rosalyn G. Millman—Deputy Assistant Inspector General for Surface and Maritime Programs.

*Department of the Treasury*

Phone Number: (202) 622–1090.

CIGIE Liaison—John Czajkowski, (202) 927–5835.

Dennis S. Schindel—Deputy Inspector General.

Richard K. Delmar—Counsel to the Inspector General.

John Czajkowski—Assistant Inspector General for Management.

P. Brian Crane—Assistant Inspector General for Investigations.

Maria A. Freedman—Assistant Inspector General for Audit.

Robert A. Taylor—Deputy Assistant Inspector General for Audit (Program Audits).

Joel Grover—Deputy Assistant Inspector General for Audit (Financial Management Audits).

*Treasury Inspector General for Tax Administration/Department of the Treasury*

Phone Number: (202) 622–6500.

CIGIE Liaison—Roderick Fillinger, (202) 622–3139.

Roderick Fillinger—Chief Counsel.

Joseph Hungate, Ill—Principal. Deputy Inspector General.

Michael Phillips—Deputy Inspector General for Audit.

Margaret Begg—Assistant Inspector General for Audit (Compliance and Enforcement Operations).

Timothy Camus—Assistant Inspector General for Investigations.

Michael Delgado—Assistant Inspector General for Investigations.

Alan Duncan—Assistant Inspector General for Audit (Security & Information Technology Services).

John Fowler—Deputy Assistant Inspector General for Investigations.

David Holmgren—Deputy Inspector General for Inspections and Evaluations.

Steven Jones—Deputy Inspector General for Investigations.

Larry Koskinen—Associate Inspector General for Mission Support.

Mike McKenney—Assistant Inspector General for Audit (Returns Processing and Account Services).

Nancy Nakamura—Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations).

*Department of Veterans Affairs*

Phone Number: (202) 461–4720.

CIGIE Liaison—Joanne Moffett, (202) 461–4720.

Richard Griffin—Deputy Inspector General.

Maureen Regan—Counselor to the Inspector General.

James O'Neill—Assistant Inspector General for Investigations.

Joseph Sullivan—Deputy Assistant Inspector General for Investigations (Field Operations).

Joseph Vallowe—Deputy Assistant Inspector General for Investigations (HQs Operations).

Belinda Finn—Assistant Inspector General for Audits and Evaluations.

Linda Halliday—Deputy Assistant Insepctor General for Audits and Evaluations (Field Operations).

Sondra McCauley—Deputy Assistant Inspector General for Audits and

Evaluations (HQs Management and Inspections).

Richard Ehrlichman—Assistant Inspector General for Management and Administration.

Dana Moore—Deputy Assistant Inspector General for Management and Administration.

John Daigh—Assistant Inspector General for Healthcare Inspections.

Patricia Christ—Deputy Assistant Inspector General for Healthcare Inspections.

*Environmental Protection Agency*

Phone Number: (202) 566–0847.

CIGIE Liaison—Eileen McMahon, (202) 566–2546.

Bill A. Roderick—Deputy Inspector General.

Mark Bialek—Associate Deputy Inspector General and Counsel to the Inspector General.

Eileen McMahon—Assistant Inspector General for Congressional, Public Affairs and Management.

Melissa Heist—Assistant Inspector General for Audit.

Wade Najjum—Assistant Inspector General for Program Evaluation.

Stephen Nesbitt—Assistant Inspector General for Cyber Investigations and Homeland Security.

Patricia Hill—Assistant Inspector General for Mission Systems.

*Federal Trade Commission*

Phone Number: (202) 326—2800.

CIGIE Liaison—Cynthia Hogue, (202) 326–2800.

John Seeba—Inspector General.

*General Services Administration*

Phone Number: (202) 501–0450.

CIGIE Liaison—Sarah S. Breen, (202) 219–1351.

Robert C. Erickson—Deputy Inspector General.

Richard P. Levi—Counsel to the Inspector General.

Theodore R. Stehney—Assistant Inspector General for Auditing.

Regina M. O'Brien—Deputy Assistant Inspector General for Auditing.

Gregory G. Rowe—Assistant Inspector General for Investigations.

Geoffrey Cherrington—Deputy Assistant Inspector General for Investigations.

*National Aeronautics and Space Administration*

Phone Number: (202) 358–1220.

CIGIE Liaison—Renee Juhans, (202) 358–1712.

Gail Robinson—Deputy Inspector General.

Frank LaRocca—Counsel to the Inspector General.

Kevin Winters—Assistant Inspector General for Investigations.

Alan Lamoreaux—Assistant Inspector General for Management and Planning.

*National Archives and Records Administration*

Phone Number: (301) 837–3000.

CIGIE Liaison—John Simms, (301) 837–1966.

Paul Brachfeld—Inspector General.

*National Endowment for the Humanities*

Phone Number: (202) 606–8350.

CIGIE Liaison—Laura M.H. Davis, (202) 606–8574.

Sheldon Bemstein—Inspector General.

*National Science Foundation*

Phone Number: (703) 292–7100.

CIGIE Liaison—Susan Carnohan, (703) 292–5011 and Maury Pully, (703) 292–5059.

Allison C. Lerner—Inspector General.

Thomas (Tim) Cross—Deputy Inspector General.

Brett M. Baker—Assistant Inspector General for Audit.

Peggy Fischer—Assistant Inspector General for Investigations.

*Peace Corps*

Phone Number: (202) 692–2900.

CIGIE Liaison—Joaquin Ferrao (202) 692–2921.

Kathy Buller—Inspector General (Foreign Service).

*Nuclear Regulatory Commission*

Phone Number: (301) 415–5930.

CIGIE Liaison—Deborah S. Huber, (301) 415–5930.

David C. Lee—Deputy Inspector General.

Stephen D. Dingbaum—Assistant Inspector General for Audits.

Joseph A. McMillan—Assistant Inspector General for Investigations.

*Office of Personnel Management*

Phone Number: (202) 606–1200.

CIGIE Liaison—Joyce D. Price, (202) 606–2156.

Norbert E. Vint—Deputy Inspector General.

Tern Fazio—Assistant Inspector General for Management.

Michael R. Esser—Assistant Inspector General for Audits.

J. David Cope—Assistant Inspector General for Legal Affairs.

Jeffery E. Cole—Deputy Assistant Inspector General for Audits.

*Railroad Retirement Board*

Phone Number: (312) 751–4690.

CIGIE Liaison—Jill Roellig (312) 751–4993.

William Tebbe—Assistant Inspector General for Investigations.

*Small Business Administration*

Phone Number: (202) 205–6586.

CIGIE Liaison—Robert F. Fisher (202) 205–6583.

Peter L. McClintock—Deputy Inspector General.

Glenn P. Harris—Counsel to the Inspector General.

Debra S. Rift—Assistant Inspector General for Auditing.

Daniel J. O'Rourke—Assistant Inspector General for Investigations.

Robert F. Fisher—Assistant Inspector General for Management and Policy.

*Social Security Administration*

Phone Number: (410) 966–8385.

CIGIE Liaison—Misha Kelly (202) 358–6319.

Gale Stone—Deputy Assistant Inspector General for Audit.

B. Chad Bungard—Counsel to the Inspector General.

Steve Mason—Deputy Assistant Inspector General for Investigations.

Michael Robinson—Assistant Inspector General for Technology and Resource Management.

*Special Inspector General for Troubled Asset Relief Program*

Phone Number: (202) 622–2658.

CIGIE Liaison—(202) 622–2658.

Kevin Puvalowski—Regional Director (Acting Deputy Special Inspector General).

Bryan Saddler—Chief Counsel.

Christy Romero—Chief of Staff.

Eileen Ennis—Deputy Special Inspector General, Operations.

Christopher Sharpley—Deputy Special Inspector General, Investigations.

Kurt Hyde—Deputy Special Inspector General, Audit.

Timothy Lee—Senior Policy Analyst.

*United States Postal Service*

Phone Number: (703) 248–2100.

CIGIE Liaison—Agapi Doulaveris, (703) 248–2286.

Elizabeth Martin—General Counsel.

Gladis Griffith—Deputy General Counsel.

Ron Stith—Assistant Inspector General, Mission Support.

Mary Demory—Deputy Assistant Inspector General—Business Operations.

LaVan Griffith—Deputy Assistant Inspector General—Investigative Support Services.

David Sidransky—Chief Information Officer.

William Siemer—Assistant Inspector General for Investigations.

Lance Carrington—Deputy Assistant Inspector General for Investigations—West.

Yvette Savoy—Deputy Assistant Inspector General for Investigations—North.

Tammy Whitcomb—Assistant Inspector General for Audits.

Robert Batta—Deputy Assistant Inspector General for Audits—Mission Operations.

John Cihota—Deputy Assistant Inspector General for Audits—Financial Accountability.

Darrell Benjamin—Deputy Assistant Inspector General for Audits—Revenue and Systems.

Mark Duda—Deputy Assistant Inspector General for Audits—Support Operations.

Mohammad Adra—Assistant Inspector General for Risk Analysis Research Center.

Dated: August 30, 2010.

**Mark D. Jones,**

*Acting Executive Director, Council of the Inspectors General on Integrity and Efficiency.*

[FR Doc. 2010–22691 Filed 9–13–10; 8:45 am]

**BILLING CODE M**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0030

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR part 764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 14, 2010, in order to be assured of consideration.

**ADDRESSES:** Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–5806 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request a copy of this information collection request, contact John Trelease at (202) 208–2783, or electronically to *jtrelease@osmre.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and record activities [*see* 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in: 30 CFR part 764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 1029–0030, and displayed in 30 CFR 764.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on June 29, 2010 (75 FR 37458). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

*Title:* 30 CFR 764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations Areas designated by Act of Congress.

*OMB Control Number:* 1029–0030.

*Summary:* This part implements the requirement of section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, which provides authority for citizens to petition States to designate lands unsuitable for surface coal mining operations, or to terminate such designation. The regulatory authority uses the information to identify, locate, compare and evaluate the area requested to be designated as unsuitable, or terminate the designation, for surface coal mining operations.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* Individuals or groups that petition the States, and the State regulatory authorities that must process the petitions.

*Total Annual Respondents:* 4 petitions and 4 regulatory authorities.

*Total Annual Burden Hours:* 5,200.

*Total Annual Non-wage Costs:* $400.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1029–0030 in all correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 8, 2010.

**John R. Craynon,**

*Chief, Division of Regulatory Support.*

[FR Doc. 2010–22733 Filed 9–13–10; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R3–ES–2010–N129; 30120–1113–0000–C4]**

### Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of Seven Midwest Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of initiation of reviews; request for information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (Act), of seven animal and plant species. We conduct these reviews to ensure that our classification of each species on the Lists of Endangered and Threatened Wildlife and Plants as threatened or endangered is accurate. A 5-year review

assesses the best scientific and commercial data available at the time of the review. We are requesting the public to send us any information that has become available since the most recent status reviews on each of these species. Based on review results, we will determine whether we should change the listing status of any of these species.

**DATES:** To ensure consideration, please send your written information by November 15, 2010. However, we will continue to accept new information about any listed species at any time.

**ADDRESSES:** For how and where to send comments or information, *see* "VIII. Contacts" under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** To request information, *see* "VIII. Contacts" under **SUPPLEMENTARY INFORMATION.** Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY (telephone typewriter or teletypewriter) assistance.

**SUPPLEMENTARY INFORMATION:**

## I. Why do we conduct a 5-year review?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Then, under section 4(c)(2)(B), we determine whether to remove any species from the List (delist), to reclassify it from endangered to threatened, or to reclassify it from threatened to endangered. Any change in Federal classification requires a separate rulemaking process.

In classifying, we use the following definitions, from 50 CFR 424.02:

(A) *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, that interbreeds when mature;

(B) *Endangered species* means any species that is in danger of extinction throughout all or a significant portion of its range; and

(C) *Threatened species* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

We must support delisting by the best scientific and commercial data available, and only consider delisting if data substantiate that the species is neither endangered nor threatened for one or more of the following reasons (50 CFR 424.11(d)):

(A) The species is considered extinct;

(B) The species is considered to be recovered; or

(C) The original data available when the species was listed, or the interpretation of data, were in error.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing the species we are reviewing.

## II. What species are under review?

This notice announces our active 5-year status reviews of the species in table 1.

TABLE 1—CURRENT LISTING STATUS OF SPECIES UNDER 5-YEAR STATUS REVIEW

| Common name | Scientific name | Status | Where listed | Final listing rule publication date and citation |
|---|---|---|---|---|
| **Animals** | | | | |
| Higgins eye | *Lampsilis higginsii* | Endangered | U.S.A. (IA, IL, MN, MO, NE, WI). | June 14, 1976 (41 FR 24064). |
| Snail, Iowa Pleistocene | *Discus macclintocki* | Endangered | U.S.A. (IA, IL) | July 3, 1978 (43 FR 28932). |
| Beetle, Hungerford's crawling water. | *Brychius hungerfordi* | Endangered | U.S.A. (MI, Canada) | March 7, 1994 (59 FR 10580). |
| **Plants** | | | | |
| Missouri bladderpod | *Physaria filiformis* (=*Lesquerella filiformis*). | Threatened | U.S.A. (AR, MO) | October 15, 2003 (68 FR 59337). |
| Running buffalo clover | *Trifolium stoloniferum* | Endangered | U.S.A. (AR, IL, IN, KS, KY, MO, OH, WV). | June 5, 1987 (52 FR 21478). |
| Western prairie fringed orchid. | *Platanthera praeclara* | Threatened | U.S.A. (IA, KS, MN, MO, ND, NE, OK, SD), Canada (Man.). | September 28, 1989 (54 FR 39857). |
| Pitcher's thistle | *Cirsium pitcheri* | Threatened | U.S.A. (IL, IN, MI, WI), Canada (Ont.). | July 18, 1988 (53 FR 27137). |

## III. What do we consider in our review?

We consider all new information available at the time we conduct a 5-year status review. We consider the best scientific and commercial data that has become available since our current listing determination or most recent status review, accessible from our Web site *http://www.fws.gov/midwest/Endangered/recovery/5yr_rev/completed5yrs.html,* such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends (*see* five factors under heading "How Do We Determine Whether a Species Is Endangered or Threatened?"); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

## IV. How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is

endangered or threatened based on one or more of the five following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

Under section 4(b)(1) of the Act, we must base our assessment of these factors solely on the best scientific and commercial data available.

**V. What could happen as a result of our review?**

For each species under review, if we find new information that indicates a change in classification may be warranted, we may propose a new rule that could do one of the following:

(A) Reclassify the species from threatened to endangered (uplist);

(B) Reclassify the species from endangered to threatened (downlist); or

(C) Remove the species from the List (delist).

If we determine that a change in classification is not warranted, then the species remains on the List under its current status. Therefore, elsewhere in today's issue of the **Federal Register**, we have published a direct final rule to notify the public that we are revising the List of Endangered and Threatened Plants (50 CFR 17.12(h)) to reflect the most recent scientifically accepted taxonomy and nomenclature of *Physaria filiformis* (=*Lesquerella f.*), in accordance with 50 CFR 17.12(b). We published our direct final rule because revision of the List for this purpose is a noncontroversial action that, in the best interest of the public, should be undertaken in as timely manner as possible. The direct final rule will be effective on the date specified (*see* the **DATES** section of the rule) unless we receive significant adverse comments. Significant adverse comments are comments that provide strong justifications as to why our rule should not be adopted or why it should be changed. We will give the same consideration to comments submitted in response to either our direct final rule or notice to initiate 5-year reviews; you do not need to submit separate comments in regard to the taxonomy of Missouri bladderpod for both documents.

**VI. Request for New Information**

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See "What Information Do We Consider in Our Review?" for specific criteria. If you submit information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Submit your comments and materials to the appropriate U.S. Fish and Wildlife Service office listed under "VIII. Contacts."

Submit all electronic information in Text or Rich Text format to *FW3MidwestRegion_5YearReview@fws.gov.* Please send information for each species in a separate e-mail. Provide your name and return address in the body of your message, and include the following identifier in your e-mail subject line: Information on 5-year review for [NAME OF SPECIES].

**VII. Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

**VIII. Contacts**

Send your comments and information on the following species, as well as requests for information, to the corresponding contacts. You may view information we receive in response to this notice, as well as other documentation in our files, at the following locations by appointment, during normal business hours.

| Species | Contact person, phone, e-mail | Contact address |
|---|---|---|
| Higgins eye (pearlymussel) and *Platanthera praeclara*. | Mr. Phil Delphey, (612) 725–3548, *phil_delphey@fws.gov*. | Twin Cities Field Office, U.S. Fish and Wildlife Service, 1401 American Boulevard E., Bloomington, MN 55425–1665. |
| Iowa Pleistocene snail | Ms. Kristen Lundh, (309) 757–5800, *kristen_lundh@fws.gov*. | Rock Island Field Office, U.S. Fish and Wildlife Service, 1511 47th Avenue, Moline, IL 61265. |
| Hungerford's crawling water beetle | Ms. Barbara Hosler, (517) 351–6326, *barbara_hosler@fws.gov*. | East Lansing Field Office, U.S. Fish and Wildlife Service, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823–5902. |
| *Physaria filiformis* (=*Lesquerella filiformis*) | Dr. Paul McKenzie, (573) 234–2132, extension 107, *paul_mckenzie@fws.gov*. | Columbia Missouri Field Office, U.S. Fish and Wildlife Service, 101 Park DeVille Drive, Suite A, Columbia, MO 65203–0057. |
| *Trifolium stoloniferum* | Ms. Julie Proell, (614) 416–8993, extension 19, *julie_proell@fws.gov*. | Ohio Field Office, U.S. Fish and Wildlife Service, 4625 Morse Road, Suite 104, Columbus, OH 43230. |
| *Cirsium pitcheri* | Ms. Tameka Dandridge, (517) 351–8315, *tameka_dandridge@fws.gov*. | East Lansing Field Office, U.S. Fish and Wildlife Service, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823–5902. |

## IX. Authority

We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 27, 2010.

**Thomas O. Melius,**

*Regional Director, Midwest Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2010–22812 Filed 9–13–10; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Class III Gaming Compact.

**SUMMARY:** This notice publishes an extension of Gaming between the Oglala Sioux Tribe and the State of South Dakota.

**DATES:** *Effective Date:* September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This amendment allows for the extension of the current Tribal-State Compact until December 31, 2010.

Dated: September 2, 2010.

**Donald Laverdure,**

*Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 2010–22784 Filed 9–13–10; 8:45 am]

**BILLING CODE 4310–4N–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Denver Museum of Nature & Science, Denver, CO. The human remains and associated funerary objects were removed from Grand County, UT; possibly eastern Utah or western Colorado; Montezuma County, CO; and the American "Southwest."

This notice is published as part of the National Park Service;s administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects a Notice of Inventory Completion published in the **Federal Register** (75 FR 42770–42771, July 22, 2010) with the addition of 13 associated funerary objects. Since the publication of the notice, additional associated funerary objects likely removed from an unknown site in eastern Utah or western Colorado by H. Marie Wormington were found to be in the possession of the Denver Museum of Nature & Science collections.

In the **Federal Register** of July 22, 2010, paragraph number 4, page 42770, is corrected by substituting the following paragraph:

In the 1940s, human remains representing a minimum of four individuals were likely removed during excavations in eastern Utah or western Colorado by H. Marie Wormington, archeologist. In 1993, Wormington donated these remains to the museum (DMNS catalogue (and CUI numbers) A1985.1 (CUI 24), A1985.2 (CUI 25), A1985.3 (CUI 26), and A1985.4 (CUI 27)). The remains include one adult female, one child of indeterminate sex, and two adults of indeterminate sex. Most of these individuals are represented by fragmentary remains. Newspaper wrappings around the remains are dated to March 12, 1949. Wormingtoncoms field expeditions during this time focused on the area between Utah and Colorado. No known individuals were identified. The 13 associated funerary objects are unworked rocks associated with the adult female (DMNS catalogue number A1985.1).

In the **Federal Register** of July 22, 2010, paragraph number 2, page 42771, is corrected by substituting the following paragraph:

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 16 individuals of Native American ancestry. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 17 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Chip Colwell-Chanthaphonh, Denver Museum of Nature & Science, 2001 Colorado Blvd., Denver, CO 80205, telephone (303) 370–6378, before October 14, 2010. Disposition of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New

Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; Ysleta Del Sur Pueblo of Texas; Zuni Tribe of the Zuni Reservation, New Mexico; and the Southern Paiute Consortium, a non-federally recognized Indian group, that this notice has been published.

Dated: September 8, 2010.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2010–22786 Filed 9–13–10; 8:45 am]

**BILLING CODE 4312–50–S**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Land Acquisitions; Nisqually Indian Tribe

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of final agency action to transfer title from the United States to the Nisqually Tribe as mandated by Congress.

**SUMMARY:** The Assistant Secretary—Indian Affairs accepts the transfer of the approximately 179.14 acres, more or less, in trust for the Nisqually Indian Tribe of Washington, from the United States Army Corps of Engineers.

**FOR FURTHER INFORMATION CONTACT:** Ben Burshia, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone no. (202) 208–7737.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to subsection (a)(1) of section 2837 of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107–107, 115 Stat. 1012, 1315–1316, as amended by Section 2852 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, 118 Stat. 1811, 2143–2144, as amended by Section 2862 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–84, 123 Stat. 2190, 2694, the Assistant Secretary—Indian Affairs, on behalf of the Department of the Interior, Bureau of Indian Affairs, has accepted the custody and administrative accountability for approximately 179.14 acres of land at the Fort Lewis Military Reservation, Thurston County, Washington, subject to the terms, conditions, reservations, and restrictions as described in the transfer letter, to be held in trust for the Nisqually Indian Tribe of the Nisqually Reservation.

**Legal Description of the Property Acquired**

The property acquired includes all of the following described tracts of land comprising a net area of 179.14 acres of land, more or less, situated within Thurston County, Washington, to wit: Two parcels of land in Section 33 in Township 18 North, Range 1 East, Willamette Meridian, in Thurston County, Washington, more particularly described as follows:

*Parcel 1:*

That portion of Tract A–1 (described below) being in the northwest quarter (NW¼) of Section 33 of Township 18 North, Range 1 East, Willamette Meridian, lying northerly of the north right-of-way line of Yelm Highway SE and southwesterly of the southwest right-of-way line of Olympia-Yelm Road being State Highway 510 (formerly 5–1); and

*Parcel 2:*

That portion of Tract A–1 (described below) being in the northwest quarter (NW¼) and the southwest quarter of the northeast quarter (SW¼NE¼) of Section 33, of Township 18 North, Range 1 East, Willamette Meridian, and that portion of Tract A–2 (described below) being the north half of the northeast quarter (N½NE¼) and the southeast quarter of the northeast quarter (SE¼NE¼) of Section 33, of Township 18 North, Range 1 East, Willamette Meridian, lying northerly of the north right-of-way line of Olympia-Yelm Road being State Highway 510 (formerly 5–1).

The aggregate total acres for the two parcels are 179.14 acres, more or less.

*Tract A–1*

The southwest quarter of the northeast quarter (SW¼NE¼), the southwest quarter (SW¼), the northwest quarter (NW¼), and the west half of the southeast quarter (W½SE¼) of Section 33 in Township 18 North, Range 1 East, Williamette Meridian, in Thurston County, Washington.

*Tract A–2*

The north half of the northeast quarter (N½NE¼), the southeast quarter of the northeast quarter (SE¼NE¼), and the northeast quarter of the southeast quarter (NE¼SE¼) of Section 33 in Township 18 North, Range 1 East, Williamette Meridian, in Thurston County, Washington.

Dated: September 3, 2010.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2010–22845 Filed 9–13–10; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAD08000–L14300000–ET0000; CACA 51737]**

### Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Assistant Secretary of the Interior for Land and Minerals Management proposes to withdraw, on behalf of the Bureau of Land Management (BLM), approximately 507 acres of reserved Federal minerals from the United States mining laws including the mineral and geothermal leasing and mineral materials laws, and 332,421 acres of Federal lands from settlement, sale, location, and entry under the public land laws, including the United States mining laws, and the mineral and geothermal and mineral materials laws for a period of 5 years. The withdrawal would protect the lands and preserve the status quo of the lands and mineral estate included in the proposed training land acquisition/airspace establishment project of the United States Marine Corps (USMC) Air Ground Combat Center (MCAGCC), Twenty-nine Palms, California, pending the processing of an application for withdrawal for military purposes under the Engle Act. The application also includes 43,315 acres of non-Federal lands located within the proposed boundaries of the proposed

withdrawal areas, and in the event that they return to Federal ownership in the future, the lands would be subject to the terms and conditions described below. The Federal and non-Federal lands are located in San Bernardino County.

**DATES:** Comments must be received on or before December 13, 2010.

**ADDRESSES:** Comments should be sent to Ms. Roxie Trost, Barstow Office Field Manager, Bureau of Land Management, 2601 Barstow Road, Barstow, California 92311.

**FOR FURTHER INFORMATION CONTACT:** Ms. Roxie Trost, Barstow Office Field Manager, Bureau of Land Management, 760–252–6000 or Mr. Rusty Lee, Needles Office Field Manager, Bureau of Land Management, at 760–326–7000.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Land and Minerals Management proposes to withdraw the following described Federal lands and mineral estate from settlement, sale, location, and entry under the public land laws, including the United States mining laws, and from the operation of the mineral and geothermal leasing laws and the Materials Act of 1947, subject to valid existing rights, to protect the lands and preserve the status quo pending action on an application for withdrawal of the lands for military purposes under the Engle Act:

**1. Federally Owned Surface and Mineral Estate**

*San Bernardino Meridian*

Western Acquisition Area

T. 4 N., R. 2 E.,
Sec. 1.
T. 5 N., R. 2 E.,
Secs. 1 and 2;
Secs. 11 to 14, inclusive, and Secs. 23 to 26, inclusive;
Sec. 35.
T. 6 N., R. 2 E.,
Sec. 13;
Secs. 23 to 26, inclusive;
Sec. 35.
T. 4 N., R. 3 E.,
Sec. 1, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, NW¼;SW¼, and SE¼;
Sec. 2;
Sec. 3, E½ of lot 1 of NE¼, lot 2 of NE¼, lot 2 of NW¼, and S½S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼;, SW¼, and S½SE½;
Secs 5 and 6;
Sec. 7, E½;
Secs. 8 and 9;
Sec. 10, N½N½;
Sec. 12, N½ and SE¼.
T. 5 N., R. 3 E., partly unsurveyed.
Secs. 2 to 35, inclusive;
Sec. 36, SW¼.
T. 4 N., R. 4 E.,
Secs. 1 to 15, inclusive;
Sec. 17;
Sec. 18, N;½
Sec. 20, N½;
Secs. 21 to 27, inclusive;
Sec. 28, N½.
T. 5 N., R. 4 E., partly unsurveyed.
Secs. 2 to 11, inclusive;
Sec. 12, all except for Mineral Survey No. 6336;
Sec. 13, E½, E½E½NW¼, E½SW¼, and E½W½SW¼;
Secs. 14, 15, and 16;
Sec. 17, NW¼ and S½;
Secs. 18 to 24, inclusive;
Sec. 25, N½, SW¼, and W½SE¼;
Sec. 26, lots 1 to 4, inclusive, W½, and SE¼;
Secs. 27 to 36, inclusive.
T. 6 N., R. 4 E.,
Secs. 1 to 15, inclusive, and Secs. 17 to 24, inclusive;
Sec. 26;
Secs. 27 and 28, all except for Mineral Survey Nos. 3000 and 3980;
Secs. 29 to 35, inclusive;
Sec. 36, N½ and SW¼.
T. 3 N., R. 5 E.,
Secs. 1, 2, and 3;
Sec. 4, lots 1 to 12, inclusive;
Secs. 5 and 6;
Sec. 9, lots 1 and 2;
Sec. 10, lots 1 to 7, inclusive;
Sec. 11;
Sec. 12, lots 1 to 12, inclusive.
T. 4 N., R. 5 E., partly unsurveyed.
Secs. 2 to 35, inclusive.
T. 5 N., R. 5 E.,
Secs. 4 and 5;
Sec. 6, lots 1 to 10, inclusive, SE¼NW¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 7, lots 1 to 4, inclusive, lots 6 and 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8;
Secs. 14, 15, 18, 19, 20, 22, 23, 26, 27, 28, 30, 31, 32, 34, and 35.
T. 6 N., R. 5 E.,
Secs. 17 to 20, inclusive, and Secs. 29 to 32, inclusive.

Southern Acquisition Area

T. 2 N., R. 9 E.,
Sec. 25;
Sec. 26, all except for N½NW¼SW¼SW¼;
Sec. 27, E½ except for W½SE¼SE¼SE¼;
Sec. 34, S½NE¼NE¼NE¼, SE¼NE¼NE¼, W½NE¼NE¼, NW¼NE¼, and E½NW¼;
Sec. 35, N½ except for N½NE¼NE¼NE¼ and S½SW¼NW¼NE¼.
T. 2 N., R. 10 E.,
Secs. 2 to 11, inclusive;
Sec. 14, that portion lying north and west of the boundary of the Cleghorn Lakes Wilderness Area;
Sec. 15 and Secs. 17 to 22, inclusive;
Sec. 23, that portion lying west of the boundary of the Cleghorn Lakes Wilderness Area;
Sec. 26, that portion lying west and south of the boundary of the Cleghorn Lakes Wilderness Area;
Secs. 27 to 35, inclusive.

Eastern Acquisition Area

T. 4 N., R. 11 E.,
Secs. 1, 2, 11, 12, and 14.
T. 5 N., R. 11 E.,
Sec. 35.
T. 3 N., R. 12 E.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22, 23, and 24;
Sec. 25, that portion lying west of the boundary of the Sheephole Valley Wilderness Area;
Secs. 26 and 27;
Sec. 34, that portion lying north and east of the boundary of Cleghorn Lakes Wilderness Area;
Sec. 35.
T. 4 N., R. 12 E.,
Secs. 1 to 8, inclusive;
Secs. 10, 11, 12, 14, and 15;
Sec. 18, all except for Mineral Survey No. 5802;
Sec. 19, N½ except for Mineral Survey Nos. 5802 and 5805;
Sec. 21, E½;
Secs. 23 to 27, inclusive;
Sec. 28, E½;
Secs. 34 and 35.
T. 5 N., R. 12 E.,
Secs. 19 and 20, all except the lands conveyed by Patent No. 1000678;
Secs. 21 to 27, inclusive;
Sec. 28, N½ and SW¼;
Secs, 29 and 30, all except the lands conveyed by Patent No. 1000678;
Secs. 31 to 35, inclusive.
T. 3 N., R. 13 E.,
Sec. 4, that portion lying west of the Sheephole Valley Wilderness Area;
Secs. 5 and 7;
Secs. 8, 17, 18, and 19, those portions lying west of the Sheephole Valley Wilderness Area.
T. 4 N., R. 13 E.,
Secs. 1 to 4, inclusive, Secs. 6 to 15, inclusive, and Secs. 17 to 22, inclusive;
Secs. 23, 24, and 27, those portions lying northwesterly of the Sheephole Valley Wilderness Area;
Secs. 28 to 32, inclusive;
Secs. 33 and 34, that portion lying northwesterly of the Sheephole Valley Wilderness Area.
T. 5 N., R. 13 E.,
Secs. 13, 19, and 20;
Sec. 22, W½;
Secs. 23 to 28, inclusive, Secs. 30, 31, 32, 34, and 35.
T. 3 N., R. 14 E.,
Secs. 1 and 2;
Secs. 3, 4, and 10, those portions lying east of the Sheephole Valley Wilderness Area;
Secs. 11, 12, and 13;
Secs. 14 and 15, those portions lying east of the Sheephole Valley Wilderness Area.
T. 4 N., R. 14 E.,
Secs. 6, 7, 8, 10, 11, 12, 14, 15, 17, and 18;
Sec. 20, that portion lying northeasterly of the Sheephole Valley Wilderness Area;
Secs. 21 to 24, inclusive;
Sec. 25, that portion lying northwesterly of the Cadiz Dunes Wilderness Area;
Secs. 26, 27, and 28;
Sec. 29, that portion lying northeasterly of the Sheephole Valley Wilderness Area;
Secs. 33, 34, and 35.
T. 5 N., R. 14 E.,
Secs. 30 and 31.

T. 4 N, R. 15 E.,
Secs. 1 to 4, inclusive;
Sec. 5, all except for railroad rights-of-way;
Secs. 6, 7 and 8;
Sec. 9, all except for railroad rights-of-way;
Secs. 10 to 15, inclusive, and Secs. 18 to 21, inclusive;
Secs. 22 to 25, those portions lying northwesterly or northeasterly of the Cadiz Dunes Wilderness Area, inclusive;
Secs. 28 to 30, those portions lying northwesterly or northeasterly of the Cadiz Dunes Wilderness Area, inclusive;
Sec. 32, that portion lying northeasterly of the Cadiz Dunes Wilderness Area.
T. 5 N., R. 15 E.,
Secs. 10 to 15, inclusive, and Secs. 19 to 35, inclusive.
T. 3 N., R. 16 E.,
Sec. 3, that portion lying northeasterly of the pipeline authorized by CACA 14013 and lying northwesterly of the Old Woman Mountains Wilderness Area.
T. 4 N., R. 16 E.,
Secs. 4 and 5, those portions lying southwesterly of the Old Woman Mountains Wilderness Area;
Secs. 6, 7 and 8;
Sec. 9, that portion lying southwesterly of the Old Woman Mountains Wilderness Area;
Sec. 16, that portion lying southwesterly of the Old Woman Mountains Wilderness Area;
Secs. 17 to 20, inclusive;
Secs. 21 and 22, those portions lying southwesterly of the Old Woman Mountains Wilderness Area;
Secs. 27, that portion lying southwesterly of the Old Woman Mountains Wilderness Area;
Sec. 28;
Sec. 29, all except for that portion in railroad right-of-way containing 17 acres;
Secs. 30, 31, and 32, those portions lying northeasterly of the Cadiz Dunes Wilderness Area;
Sec. 33, that portion lying northeasterly of the Cadiz Dunes Wilderness Area except for that portion contained in railroad right-of-way containing 14.55 acres;
Sec. 34, that portion lying southwesterly of the Old Woman Mountains Wilderness Area.
T. 5 N., R. 16 E.,
Secs. 6 and 7, those portions lying westerly of the Old Woman Mountains Wilderness Area;
Secs. 18, 19, and 20, those portions lying westerly of the Old Woman Mountains Wilderness Area;
Secs. 30 and 31;
Sec. 32, that portion lying westerly of the Old Woman Mountains Wilderness Area.

The areas described aggregate 332,421 acres, more or less in San Bernardino County.

**2.** *Non-Federal Surface Estate and Federal Mineral Estate*

*San Bernardino Meridian*

Southern Acquisition Area

T. 2 N., R. 9 E.,
Sec. 26, N½NW¼SW¼SW¼;
Sec. 27, W½SE¼SE¼SE¼;
Sec. 35, N½NE¼NE¼NE¼ and S½SW¼NW¼NE¼.

*Eastern Acquisition Area*

T. 5 N., R. 12 E.,
Sec. 5, lot 1 of NE¼, W½ of lot 1 of NW¼, lots 5 and 6 inclusive, SE¼NW¼, and S½.

The areas described aggregate 507 acres, more or less in San Bernardino County.

**3.** *Non-Federal Lands*

The following described lands are located within the boundaries of the proposed withdrawal areas. In the event the United States subsequently acquires these lands, they would be subject to the terms and conditions of the withdrawal as described above. The Federal interest would be subject to the terms and conditions of the withdrawal as described above:

(a). Non-Federal Surface and Mineral Estate:

*San Bernardino Meridian*

Western Acquisition Area

T. 5 N., R. 2 E.,
Sec. 36.
T. 6 N., R. 2 E.,
Sec. 36.
T. 5 N., R. 3 E.,
Sec. 1;
Sec. 36, N½ and SE¼.
T. 6 N., R. 3 E.,
Sec. 1, S½ of lot 4;
Sec. 4, that land described by metes and bounds in Patent No. 04–67–0117 and containing 180.445 acres, more or less;
Secs. 10 to 11, that land described by metes and bounds in Patent No. 04–68–0173 and containing 20.104 acres, more or less;
Sec. 25;
Sec. 31, that land described by metes and bounds in Patent No. 994392 and containing 41.322 acres, more or less;
Sec. 36.
T. 4 N., R. 4 E.,
Sec. 16, N½ and SE¼.
T. 5 N., R. 4 E.,
Sec. 1;
Sec. 12, E½NE¼ and N½SE¼;
Sec. 13, W½NW¼, west 20 rods of the E½NW¼, and W½W½SW¼;
Sec. 17, NE¼;
Sec. 25, lots 1 to 8, inclusive, and E½SE¼.
T. 6 N., R. 4 E.,
Sec. 16, and 25;
Secs. 27 to 28, that land described by metes and bounds in Patent Nos. 24783, 38438, and 38980, and containing 151.250 acres, more or less;
Sec. 36, SE¼.
T. 3 N., R. 5 E.,
Sec. 4, W½NW¼NE¼SW¼, NW¼NE¼SW¼, W½SE¼NE¼SW¼, E½NE¼SW¼SW¼, W½NE¼SW¼SW¼, E½SW¼SW¼SW¼, W½SE¼SW¼SW¼, and W½SE¼SE¼SW¼;
T. 4 N., R. 5 E.,
Secs. 1 and 36.
T. 5 N., R. 5 E.,
Sec. 6, SE¼SE¼;
Sec. 7, lot 5;
Secs. 9, 17, 21, 29, and 33.

Southern Acquisition Area

T. 2 N., R. 9 E.,
Sec. 26, N½NW¼SW¼SW¼;
Sec. 27, W½SE¼SE¼SE¼.

Eastern Acquisition Area

T. 4 N., R. 11 E.,
Sec. 13.
T. 5 N., R. 11 E.,
Sec. 36.
T. 4 N., R. 12 E.,
Secs. 9, 13, 16, and 17;
Secs. 18 to 19, that land described by metes and bounds in Patent Nos. 973412 and 968382, and containing 82.310 acres, more or less;
Sec. 22, and 36.
T. 5 N., R. 12 E.,
Secs. 19, 20, 29, and 30, all the lands conveyed by Patent No. 1000678, containing 1,342.40 acres, more or less;
Sec. 16;
Sec. 28, SE¼;
Sec. 36.
T. 4 N., R. 13 E.,
Sec. 5 and 16;
T. 5 N., R. 13 E.,
Sec. 21;
Sec. 22, E½;
Sec. 29 and 33;
Sec. 36, SW¼.
T. 3 N., R. 14 E.,
Sec. 36, that portion lying east of the Sheephole Valley Wilderness Area.
T. 4 N., R. 14 E.,
Secs. 1 to 5, inclusive, secs. 9, 13, and 16.
T. 5 N., R. 14 E.,
Secs. 19 to 29, inclusive, and secs. 32 to 36, inclusive.
T. 4 N., R. 15 E.,
Secs. 16 to 17, inclusive;
Sec. 33, that portion lying northwesterly of the Sheephole Valley Wilderness Area.
T. 4 N., R. 16 E.,
Sec. 29, that portion contained in railroad right-of-way containing 17 acres;
Sec. 33, that portion contained in railroad right-of-way containing 14.55 acres.
T. 5 N., R. 16 E.,
Sec. 29, that portion lying southwesterly of the Old Woman Mountains Wilderness Area.

The areas described aggregate 39,570 acres, more or less in San Bernardino County.

(b). State of California owned surface and mineral estate:

*San Bernardino Meridian*

Western Acquisition Area

T. 4 N., R. 3 E.,
Sec. 1, NE¼SW¼ and S½SW¼;
Sec. 3, SW¼NE¼, S½NW¼, and N½S½;
Sec. 4, N½SE¼.
T. 6 N., R. 3 E.,
Sec. 16.
T. 4 N., R. 4 E.,
Sec. 16, SW¼;
Sec. 19, E½E½;
Sec. 20, S½;
Sec. 28, S½;
Sec. 29, E½.
T. 5 N., R. 5 E.,
Sec. 16.

Southern Acquisition Area

T. 2 N., R. 10 E.,
Sec. 16.

Eastern Acquisition Area

T. 5 N., R. 13 E.,

Sec. 36, N½ and SE¼.

The areas described aggregate 3,745 acres, more or less in San Bernardino County.

The purpose of the proposed withdrawal is to protect and preserved the status quo of the lands pending action on an application for withdrawal for military purposes under the Engle Act. Currently, the lands are not being used for military training purposes.

The use of a right-of-way or cooperative agreement would not prohibit new mineral location.

The proposed withdrawal would not require water.

There are no suitable alternative sites. The USMC analyzed lands elsewhere in the United States and concluded that the lands located adjacent to MCAGCC were the best site for the proposed training.

On or before December 13, 2010, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM, Barstow Field Office Manager at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Barstow Field Office at the address above during regular business hours. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Notice is hereby given that a public meeting will be afforded in connection with the proposed withdrawal. A notice of the time and place of the public meeting will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

This withdrawal proposal will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from settlement, sale, location and entry under the public land laws, including the United States mining laws, and from the operation of the mineral and geothermal leasing laws and the Materials Act of 1947 unless the application is denied or canceled or the withdrawal is approved prior to that date.

Licenses, permits, cooperative agreement, or discretionary land use authorizations of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of the authorized officer of BLM during the segregative period.

**Authority:** 43 CFR 2310.3–1(a), (b)(1) and (2).

**Karla D. Norris,**

*Associate Deputy State Director, CA–930.*

[FR Doc. 2010–22817 Filed 9–13–10; 8:45 am]

**BILLING CODE 3810–FF–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–10–027]**

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** September 20, 2010 at 1 p.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–125 (Third Review) (Potassium Permanganate from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before September 30, 2010.)
5. Inv. Nos. 731–TA–1082 and 1083 (Review)(Chlorinated Isocyanurates from China and Spain)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before September 30, 2010.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 10, 2010.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. 2010–23055 Filed 9–10–10; 4:15 pm]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1103–0016]**

### Justice Management Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Certification of Identity.

The Department of Justice (DOJ), Justice Management Division, Facilities and Administrative Services Staff (JMD/FASS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 133 page 39972 on July 13, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Certification of Identity.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form DOJ–361. Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: American Citizens. Other: Federal Government. The information collection will be used by the Department to identify individuals requesting certain records under the Privacy Act. Without this form an individual cannot obtain the information requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 27,000 respondents will complete the form within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 13,500 annual burden hours associated with this collection.

*If Additional Information is Required Contact:* Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: September 8, 2010.

**Lynn Murray,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. 2010–22888 Filed 9–13–10; 8:45 am]

**BILLING CODE 4410–CW–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–318F]**

### Controlled Substances: Final Revised Aggregate Production Quotas for 2010

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of final aggregate production quotas for 2010.

**SUMMARY:** This notice establishes final 2010 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act (CSA). DEA has taken into consideration comments received in response to a notice of the proposed revised aggregate production quotas for 2010 published June 23, 2010 (75 FR 35838).

**DATES:** *Effective Date:* September 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (202) 307–7183.

**SUPPLEMENTARY INFORMATION:** Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant 28 CFR 0.104.

The 2010 aggregate production quotas represent those quantities of controlled substances in schedules I and II that may be produced in the United States in 2010 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances.

On June 23, 2010, a notice of the proposed revised 2010 aggregate production quotas for certain controlled substances in schedules I and II was published in the **Federal Register** (75 FR 35838). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before July 23, 2010.

Fourteen companies, thirteen DEA registered manufacturers and one non-registrant, commented on a total of 28 schedules I and II controlled substances within the published comment period. Comments received proposed that the aggregate production quotas for alfentanil, amphetamine (for conversion), amphetamine (for sale), codeine (for conversion), codeine (for sale), dextropropoxyphene, dihydromorphine, diphenoxylate, gamma hydroxybutyric acid, hydrocodone, hydromorphone, lisdexamfetamine, meperidine, methadone, methylphenidate, morphine (for conversion), morphine (for sale), nabilone, opium (tincture), oxycodone (for conversion), oxycodone (for sale), oxymorphone (for sale), remifentanil, sufentanil, tapentadol, tetrahydrocannabinols, thebaine and tilidine were insufficient to provide for the estimated medical, scientific, research, and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

DEA has taken into consideration the above comments along with the relevant 2009 year-end inventories, initial 2010 manufacturing quotas, 2010 export requirements, actual and projected 2010 sales, research, product development requirements and additional applications received. Based on this information, the DEA has adjusted the final 2010 aggregate production quotas for alfentanil, amphetamine (for conversion), amphetamine (for sale), carfentanil, dihydromorphine, diphenoxylate, marihuana, morphine (for sale), noroxymorphone (for sale), opium (tincture), oxycodone (for conversion), oxycodone (for sale), oxymorphone (for conversion), oxymorphone (for sale), tapentadol, tetrahydrocannabinols, and tilidine.

4-anilino-N-phenethyl-4-piperidine (ANPP) pursuant to DEA's final rule published in the **Federal Register** on June 29, 2010 (75 FR 37295) will be controlled as a schedule II controlled substance on August 30, 2010. As such, DEA has established an aggregate production quota for ANPP to meet the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

Regarding codeine (for conversion), codeine (for sale), dextropropoxyphene, gamma hydroxybutyric acid, hydrocodone, hydromorphone, lisdexamfetamine, meperidine, methadone, methylphenidate, morphine (for conversion), nabilone, remifentanil, sufentanil, and thebaine, DEA has determined that the proposed revised 2010 aggregate production quotas are sufficient to meet the current 2010 estimated medical, scientific, research, and industrial needs of the United States and to provide for adequate inventories.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator, pursuant to 28 CFR 0.104, the Deputy

Administrator hereby orders that the 2010 final aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

| Basic class | Final revised 2010 quotas |
|---|---|
| **Schedule I** | |
| 2,5-Dimethoxyamphetamine | 2 g |
| 2,5-Dimethoxy-4-ethylamphetamine (DOET) | 2 g |
| 3-Methylfentanyl | 2 g |
| 3-Methylthiofentanyl | 2 g |
| 3,4-Methylenedioxyamphetamine (MDA) | 20 g |
| 3,4-Methylenedioxy-N-ethylamphetamine (MDEA) | 10 g |
| 3,4-Methylenedioxymethamphetamine (MDMA) | 20 g |
| 3,4,5-Trimethoxyamphetamine | 2 g |
| 4-Bromo-2,5-dimethoxyamphetamine (DOB) | 2 g |
| 4-Bromo-2,5-dimethoxyphenethylamine (2-CB) | 2 g |
| 4-Methoxyamphetamine | 77 g |
| 4-Methylaminorex | 2 g |
| 4-Methyl-2,5-dimethoxyamphetamine (DOM) | 2 g |
| 5-Methoxy-3,4-methylenedioxyamphetamine | 2 g |
| Acetyl-alpha-methylfentanyl | 2 g |
| Acetyldihydrocodeine | 2 g |
| Acetylmethadol | 2 g |
| Allylprodine | 2 g |
| Alphacetylmethadol | 2 g |
| Alpha-ethyltryptamine | 2 g |
| Alphameprodine | 2 g |
| Alphamethadol | 2 g |
| Alpha-methylfentanyl | 2 g |
| Alpha-methylthiofentanyl | 2 g |
| Alpha-methyltryptamine (AMT) | 2 g |
| Aminorex | 2 g |
| Benzylmorphine | 2 g |
| Betacetylmethadol | 2 g |
| Beta-hydroxy-3-methylfentanyl | 2 g |
| Beta-hydroxyfentanyl | 2 g |
| Betameprodine | 2 g |
| Betamethadol | 2 g |
| Betaprodine | 2 g |
| Bufotenine | 3 g |
| Cathinone | 3 g |
| Codeine-N-oxide | 602 g |
| Diethyltryptamine | 2 g |
| Difenoxin | 3,000 g |
| Dihydromorphine | 3,608,000 g |
| Dimethyltryptamine | 3 g |
| Gamma-hydroxybutyric acid | 52,156,000 g |
| Heroin | 20 g |
| Hydromorphinol | 2 g |
| Hydroxypethidine | 2 g |
| Ibogaine | 1 g |
| Lysergic acid diethylamide (LSD) | 15 g |
| Marihuana | 21,000 g |
| Mescaline | 5 g |
| Methaqualone | 7 g |
| Methcathinone | 4 g |
| Methyldihydromorphine | 2 g |
| Morphine-N-oxide | 605 g |
| N-Benzylpiperazine | 2 g |
| N,N-Dimethylamphetamine | 2 g |
| N-Ethylamphetamine | 2 g |
| N-Hydroxy-3,4-methylenedioxyamphetamine | 2 g |
| Noracymethadol | 2 g |
| Norlevorphanol | 52 g |
| Normethadone | 2 g |
| Normorphine | 16 g |
| Para-fluorofentanyl | 2 g |
| Phenomorphan | 2 g |
| Pholcodine | 2 g |
| Psilocybin | 2 g |
| Psilocyn | 2 g |
| Tetrahydrocannabinols | 264,000 g |
| Thiofentanyl | 2 g |

| Basic class | Final revised 2010 quotas |
|---|---|
| Tilidine | 10 g |
| Trimeperidine | 2 g |
| **Schedule II** | |
| 1-Phenylcyclohexylamine | 2 g |
| 4-anilino-N-phenethyl-4-piperidine (ANPP) | 1,100,000 g |
| Alfentanil | 8,000 g |
| Alphaprodine | 2 g |
| Amobarbital | 3 g |
| Amphetamine (for conversion) | 7,500,000 g |
| Amphetamine (for sale) | 18,600,000 g |
| Carfentanil | 200 g |
| Cocaine | 247,000 g |
| Codeine (for conversion) | 65,000,000 g |
| Codeine (for sale) | 39,605,000 g |
| Dextropropoxyphene | 92,000,000 g |
| Dihydrocodeine | 800,000 g |
| Diphenoxylate | 827,000 g |
| Ecgonine | 83,000 g |
| Ethylmorphine | 2 g |
| Fentanyl | 1,428,000 g |
| Glutethimide | 2 g |
| Hydrocodone | 55,000,000 g |
| Hydromorphone | 3,455,000 g |
| Isomethadone | 11 g |
| Levo-alphacetylmethadol (LAAM) | 3 g |
| Levomethorphan | 5 g |
| Levorphanol | 10,000 g |
| Lisdexamfetamine | 9,000,000 g |
| Meperidine | 6,600,000 g |
| Meperidine Intermediate-A | 3 g |
| Meperidine Intermediate-B | 7 g |
| Meperidine Intermediate-C | 3 g |
| Metazocine | 1 g |
| Methadone | 20,000,000 g |
| Methadone Intermediate | 26,000,000 g |
| Methamphetamine | 3,130,000 g |
| 750,000 g of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,331,000 g for methamphetamine (for conversion) mostly for conversion to a schedule III product; and 49,000 g for methamphetamine (for sale) | |
| Methylphenidate | 50,000,000 g |
| Morphine (for conversion) | 83,000,000 g |
| Morphine (for sale) | 39,000,000 g |
| Nabilone | 9,002 g |
| Noroxymorphone (for conversion) | 9,000,000 g |
| Noroxymorphone (for sale) | 41,000 g |
| Opium (powder) | 230,000 g |
| Opium (tincture) | 1,500,000 g |
| Oripavine | 15,000,000 g |
| Oxycodone (for conversion) | 5,600,000 g |
| Oxycodone (for sale) | 105,500,000 g |
| Oxymorphone (for conversion) | 12,800,000 g |
| Oxymorphone (for sale) | 3,070,000 g |
| Pentobarbital | 28,000,000 g |
| Phenazocine | 1 g |
| Phencyclidine | 14 g |
| Phenmetrazine | 2 g |
| Phenylacetone | 12,500,001 g |
| Racemethorphan | 2 g |
| Remifentanil | 2,500 g |
| Secobarbital | 67,000 g |
| Sufentanil | 7,000 g |
| Tapentadol | 1,000,000 g |
| Thebaine | 126,000,000 g |

The Deputy Administrator further orders that the aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 shall be zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to

centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $126,400,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: September 2, 2010.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 2010–22785 Filed 9–13–10; 8:45 am]

**BILLING CODE 4410–09–P**

## OFFICE OF NATIONAL DRUG CONTROL POLICY

### Appointment of Members of Senior Executive Services Performance Review Board.

**AGENCY:** Office of National Drug Control Policy [ONDCP].

**ACTION:** Notice of Appointments.

*Heading:* Appointment of Members of Senior Executive Services Performance Review Board.

**SUMMARY:** The following persons have been appointed to the ONDCP Senior Executive Service Performance Review Board: Dr. Terry Zobeck, Ms. Martha Gagne, Ms. Christine Leonard, and Mr. Patrick Ward.

**FOR FURTHER INFORMATION CONTACT:** Please direct any questions to Linda V. Priebe, Deputy General Counsel (202) 395–6622, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

**Linda V. Priebe,**

*Deputy General Counsel.*

[FR Doc. 2010–22794 Filed 9–13–10; 8:45 am]

**BILLING CODE 3180–02–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Call for Nominations.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the patients' rights advocate position on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). Nominees should have professional or personal experience with or knowledge about patient advocacy. Also, involvement or leadership with patient advocacy organizations is preferred.

**DATES:** Nominations are due on or before November 15, 2010.

**NOMINATION PROCESS:** Submit an electronic copy of resume or curriculum vitae, along with a cover letter, to Ms. Ashley Cockerham, *ashley.cockerham@nrc.gov.* The cover letter should describe the nominee's current involvement with patients' rights advocacy and express the nominee's interest in the position. Please ensure that resume or curriculum vitae includes the following information, if applicable: education; certification; professional association membership and committee membership activities; and number of years, recentness, and type of setting for patient advocacy.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Cockerham, U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs; (240) 888–7129; *ashley.cockerham@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The patients' rights advocate provides advice to NRC staff on patients' issues associated with the regulation of medical applications of byproduct material. This advice includes ensuring patients' rights are represented during the development and implementation of NRC medical-use policy. This individual is appointed based on his or her professional and personal experience with and/or knowledge about patient advocacy, involvement and/or leadership with patient advocacy organizations, and other information obtained in letters or during the selection process. Nominees should have the demonstrated ability to establish effective work relationships with peers and implement successful approaches to problem solving and conflict resolution. ACMUI members currently serve a four-year term and may be considered for reappointment to an additional term. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) nuclear medicine physicist; (d) therapy medical physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) Agreement State representative; (k) health care administrator; and (l) diagnostic radiologist. For additional information about membership on the ACMUI, visit the ACMUI Membership Web page, *http://www.nrc.gov/about-nrc/regulatory/advisory/acmui/membership.html.*

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members are expected to attend semi-annual meetings in Rockville, Maryland and to participate in teleconferences, as needed. Members who are not Federal employees are compensated for their service. In addition, these members are reimbursed for travel and correspondence expenses. Full-time Federal employees are reimbursed for travel expenses only.

*Security Background Check:* The selected nominee will undergo a

thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to assure that there are no conflicts of interest.

Dated at Rockville, Maryland this 8th day of September, 2010.

For the U.S. Nuclear Regulatory Commission.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 2010–22827 Filed 9–13–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2010–0002]**

### Sunshine Federal Register Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission [NRC–2010–0002].

**DATES:** Weeks of September 13, 20, 27, October 4, 11, 18, 2010.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and closed.

**Week of September 13, 2010**

*Wednesday, September 15, 2010*

8:45 a.m. Affirmation Session (Public Meeting) (Tentative).

a. Final Update of the Commission's Waste Confidence Decision (Tentative).

**Week of September 20, 2010—Tentative**

There are no meetings scheduled for the week of September 20, 2010.

**Week of September 27, 2010—Tentative**

*Wednesday, September 29, 2010*

1 p.m. Briefing on Resolution of Generic Safety Issue (GSI)—191, Assessment of Debris Accumulation on Pressurized Water Reactor (PWR) Sump Performance (Public Meeting). (Contact: Michael Scott, 301–415–0565).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of October 4, 2010—Tentative**

There are no meetings scheduled for the week of October 4, 2010.

**Week of October 11, 2010—Tentative**

*Thursday, October 14, 2010*

9:30 a.m. Briefing on Alternative Risk Metrics for New Light Water Reactors (Public Meeting). (Contact: CJ Fong, 301–415–6249).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of October 18, 2010—Tentative**

*Wednesday, October 20, 2010*

9:30 a.m. Briefing on Medical Issues (Public Meeting). (Contact: Michael Fuller, 301–415–0520).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: September 9, 2010.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2010–22970 Filed 9–10–10; 4:15 pm]

**BILLING CODE 7590–01–P**

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before November 15, 2010.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jihoon Kim, Director Secondary Market & 504 Sales, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Jihoon Kim, Office of Financial Assistance, 202–205–7530 *jihoon.kim@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

**SUPPLEMENTARY INFORMATION:** These forms capture the terms and conditions of SBA's new Secondary Market for First Mortgage Loan Pool Program. SBA needs this information in order to identify program participants, term of the financial transaction involving federal government guarantees and reporting on program efficiency, including the proper use of Recovery Act funds.

*Title:* "Secondary Market for Section 504 First Mortgage Loan Pool."

*Description of Respondents:* Secondary Market Participants.

*Form Number:* 2401, 2402, 2403, 2404.

*Annual Responses:* 12,490.

*Annual Burden:* 33,075.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 2010–22915 Filed 9–13–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12274 and #12275]**

### Wisconsin Disaster Number WI–00024

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Wisconsin (FEMA–1933–DR), dated 08/11/2010.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* 07/20/2010 through 07/24/2010.

**DATES:** *Effective Date:* 09/07/2010.

*Physical Loan Application Deadline Date:* 10/12/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/11/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of WISCONSIN, dated 08/11/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Calumet.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2010–22912 Filed 9–13–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12303 and #12304]**

### Tennessee Disaster #TN–00042

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Tennessee dated 09/07/2010.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 08/16/2010.

**DATES:** *Effective Date:* 09/07/2010.

*Physical Loan Application Deadline Date:* 11/08/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/07/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Putnam.

*Contiguous Counties:*

Tennessee: Cumberland, Dekalb, Fentress, Jackson, Overton, Smith, White.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 5.000 |
| Homeowners Without Credit Available Elsewhere | 2.500 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 3.625 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

Non-Profit Organizations Without Credit Available Elsewhere 3.000.

The number assigned to this disaster for physical damage is 12303 B and for economic injury is 123040.

The States which received an EIDL Declaration # are Tennessee.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 7, 2010.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2010–22914 Filed 9–13–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–62866; File No. 4–274]**

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and the Chicago Stock Exchange, Inc.

September 8, 2010.

On July 21, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") and the Chicago Stock Exchange, Inc. ("CHX") (together with FINRA, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 17d–2 thereunder,[2] an amendment to their September 16, 1977 Agreement Between the National Association of Securities Dealers, Inc. (n/k/a FINRA) and the Midwest Stock Exchange Incorporated (n/k/a CHX) ("17d–2 Plan" or the "Plan") for the allocation of regulatory responsibilities. The proposed amended Plan was published for comment on August 12, 2010.[3] The Commission received no comments on the amended Plan. This order approves and declares effective the amended Plan.

### I. Introduction

Section 19(g)(1) of the Act,[4] among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[5] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] *See* Securities Exchange Act Release No. 62657 (August 5, 2010), 75 FR 49005 (August 12, 2010).

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

## II. The Plan

On September 26, 1978, the Commission approved the Plan allocating regulatory responsibilities pursuant to Rule 17d–2 on a provisional basis.[11] Under the Plan, FINRA was responsible, in part, for conducting on-site examinations of each dual member for which it was the DEA. On February 20, 1980, the Commission noticed for comment an amendment to the Plan, which provided, in part, for the handling of customer complaints, the review of dual members' advertising, and the arbitration of disputes under the Plan.[12] On May 30, 1980, the Commission approved the Plan, as amended.[13]

## III. Proposed Amendment to the Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members [14] of both CHX and FINRA. Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations. The amended agreement would replace the previous Plan in its entirety.

The text of the proposed Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the "CHX Certification of Common Rules" referred to herein as the "Certification") that lists every CHX rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the proposed Plan for examining and enforcing with respect to CHX members that are also members of FINRA and the associated persons therewith ("Dual Members").

Specifically, under the proposed 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of CHX that are substantially similar to the applicable rules of FINRA, as well as certain provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification ("Common Rules").[15] Common Rules would not include the application of any CHX rule or FINRA rule, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement pursuant to Rule 17d–2.[16] In the event that a Dual Member is the subject of an investigation relating to a transaction on CHX, the plan acknowledges that CHX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.[17]

Under the proposed Plan, CHX would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving CHX's own marketplace; registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules); its duties and obligations as a DEA pursuant to Rule 17d–1 under the Act; and any CHX rules that are not Common Rules.[18]

## IV. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act [19] and Rule 17d–2(c) thereunder [20] in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Dual Members that would otherwise be performed by both CHX and FINRA. Accordingly, the proposed Plan promotes efficiency by reducing costs to Dual Members. Furthermore, because CHX and FINRA will coordinate their regulatory functions in accordance with the proposed Plan, the Plan should promote investor protection.

The Commission notes that, under the proposed Plan, CHX and FINRA have allocated regulatory responsibility for those CHX rules, set forth on the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule. In addition, under the proposed Plan,

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 15191 (September 26, 1978), 43 FR 46093 (October 5, 1978).

[12] *See* Securities Exchange Act Release No. 16591 (February 20, 1980), 45 FR 12573 (February 26, 1980).

[13] *See* Securities Exchange Act Release No. 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980).

[14] The proposed 17d–2 Plan refers to these members as "Dual Members." *See* Paragraph 1(c) of the proposed 17d–2 Plan.

[15] *See* paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). *See also* paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities).

[16] *See* Securities Exchange Act Release No. 61919 (April 15, 2010), 75 FR 21051 (April 22, 2010) (File No. 4–566) (notice of filing and order approving and declaring effective the plan).

[17] *See* paragraph 6 of the proposed 17d–2 Plan.

[18] *See* paragraph 2 of the proposed 17d–2 Plan.

[19] 15 U.S.C. 78q(d).

[20] 17 CFR 240.17d–2(c).

FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the proposed Plan are specifically listed in the Certification, as may be amended by the Parties from time to time pursuant to the terms and conditions specified in the Plan.

According to the proposed Plan, CHX will review the Certification, at least annually, or more frequently if required by changes in either the rules of CHX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add CHX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete CHX rules included in the then-current list of Common Rules that are no longer substantially similar to FINRA rules; and confirm that the remaining rules on the list of Common Rules continue to be CHX rules that are substantially similar to FINRA rules.[21] FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the proposed Plan. Under the proposed Plan, CHX will also provide FINRA with a current list of Dual Members and shall update the list no less frequently than once each quarter.[22]

Under the proposed Plan, CHX would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving CHX's own marketplace; registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any CHX rules that are not Common Rules.

The Commission is hereby declaring effective a plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of CHX rules that are substantially similar to the rules of FINRA for Dual Members of CHX and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to CHX rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should the Parties decide to add a CHX rule to the Certification that is not substantially similar to a FINRA rule; delete a CHX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a CHX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act.[23]

The Plan also permits CHX and FINRA to terminate the Plan, subject to notice.[24] The Commission notes, however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d–2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission.[25]

## IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–274. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

*It is therefore ordered,* pursuant to Section 17(d) of the Act, that the Plan in File No. 4–274, between FINRA and CHX, filed pursuant to Rule 17d–2 under the Act, is approved and declared effective.

*It is therefore ordered* that CHX is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4–274.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–22837 Filed 9–13–10; 8:45 am]

**BILLING CODE 8010–01–P**

[21] *See* paragraph 2 of the proposed 17d–2 Plan.

[22] *See* paragraph 3 of the proposed 17d–2 Plan.

[23] The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Plan for examining, and enforcing compliance by, Dual Members, also would constitute an amendment to the Plan.

[24] *See* paragraph 12 of the proposed 17d–2 Plan.

[25] The Commission notes that paragraph 12 of the Plan reflects the fact that FINRA's responsibilities under the Plan will continue in effect until the Commission approves any termination of the Plan.

[26] 17 CFR 200.30–3(a)(34).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on September 17, 2010 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

The Commission will consider whether to propose rules that would require a public company to provide certain disclosures about its short-term borrowings in its filings with the Commission. The Commission will also consider whether to publish an interpretive release to provide guidance regarding the Commission's current disclosure requirements in "Management's Discussion and Analysis of Financial Condition and Results of Operations" relating to liquidity and capital resources.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 10, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–22949 Filed 9–10–10; 11:15 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act; Notice of Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 16, 2010 at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, September 16, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; an opinion; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 9, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–22900 Filed 9–10–10; 11:15 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–62849; File No. SR–NSCC–2010–07]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Amend Addendum C of its Rules and Procedures To Implement Risk Enhancements To its Stock Borrow Program

September 3, 2010.

### I. Introduction

On July 1, 2010, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–NSCC–2010–07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change was published for comment in the **Federal Register** on July 29, 2010.[2] No comment letters were received on the proposal. This order approves the proposal.

### II. Description

NSCC is amending its Rules to implement risk enhancements whereby municipal and corporate bonds will be ineligible for lending through NSCC's Stock Borrow Program ("SBP") and Members will be prevented from lending through the SBP securities that were issued by that Member or any of its affiliates.

*1. SBP Background*

In the course of daily operations, for various reasons, NSCC's Continuous Net Settlement ("CNS") system often requires a number of shares for a particular security that exceeds the number of shares available to NSCC through Member deliveries. To improve the efficiency of the clearing system in such situations, NSCC's has implemented automated stock borrow procedures to meet these needs for shares of a particular CNS security.

Members wishing to participate in the SBP notify NSCC each day of the securities they have on deposit at The Depository Trust Company ("DTC") that are available to be borrowed by NSCC. After NSCC's nighttime processing of regular deliveries, NSCC borrows from its Members the securities that have been identified as available for the SBP and that are needed to fulfill deliveries. The daytime and nighttime SBP are separate processes. Members can choose to participate only in the nighttime SBP, only in the daytime SBP, or in both. Similarly, securities needed for unfulfilled delivery obligations during the daytime processing are borrowed from Members that have made securities available. NSCC place the borrowed securities in a special CNS subaccount, and the lending Member is advanced the full market value of the borrowed securities until they are returned. As securities become available, borrowed securities are returned through normal long allocations against the special subaccount.

*2. Proposed Amendment to Addendum C of the NSCC's Rules*

After reviewing the SBP, NSCC determined that it faced increased risk when it borrows municipal or corporate bonds and when it borrows securities issued by the lending Member or any of its affiliates. First, if NSCC is unable to close out in a timely manner long positions in corporate or municipal bonds that were created by loans of such securities from a Member that becomes insolvent, then NSCC may possess high concentrations of corporate or municipal bonds that it cannot deliver to the insolvent Member. Consequently, NSCC bears an increased risk of loss because it would be forced to liquidate those corporate or municipal bond positions in thinly traded markets. Second, NSCC incurs credit exposure in instances where it borrows securities from a Member that is also the issuer of the securities or is an affiliate of the issuer. In the event that such a Member becomes insolvent, then NSCC incurs the additional risk that the securities loaned through the SBP issued by the Member or its affiliate and will likely decline in value.

In both situations, NSCC believes that the risks posed by these SBP practices outweigh the benefits to NSCC and its Members. Accordingly, NSCC is amending its Rules so that municipal and corporate bonds will be ineligible for lending through the SBP and so that Members will be unable to lend securities through the SBP that are issued by the Member or any of its affiliates. Members will be advised of the implementation date for these changes through the issuance of NSCC Important Notices.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[3] and the rules and regulations thereunder applicable to NSCC. In particular, the Commission believes that the changes NSCC is making to the SBP to establish appropriate safeguards and enhanced efficiency to mitigate risks to NSCC from the SBP are consistent with NSCC's obligations under Section 17A(b)(3)(F).[4] That section requires, among other things, that the rules of a clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–2010–07) be, and hereby is, approved.[7]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–22801 Filed 9–13–10; 8:45 am]

**BILLING CODE 8010–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 62567 (July 14, 2010), 75 FR 44828 (July 29, 2010) (SR–NSCC–2010–07).

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–62857; File No. SR–NYSEAmex-2010–89]**

## Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program That Allows Nasdaq Stock Market Securities To Be Traded on the Exchange Pursuant to UTP

September 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 500 to extend the operation of the pilot program that allows Nasdaq Stock Market ("Nasdaq") securities to be traded on the Exchange pursuant to a grant of unlisted trading privileges. The pilot is currently scheduled to expire on September 30, 2010; the Exchange proposes to extend it until the earlier of Commission approval to make such pilot permanent or January 31, 2011. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, the Commission's Web site (*http://www.sec.gov*), and *http://www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Amex Equities Rules 500–525, as a pilot program, govern the trading of any Nasdaq-listed security on the Exchange pursuant to unlisted trading privileges ("UTP Pilot Program").[3] The Exchange hereby seeks to extend the operation of the UTP Pilot Program, currently scheduled to expire on September 30, 2010, until the earlier of Commission approval to make such pilot permanent or January 31, 2011.

The UTP Pilot Program includes any security listed on Nasdaq that (i) is designated as an "eligible security" under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended ("UTP Plan"),[4] and (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Securities Exchange Act of 1934, as amended (the "Act"),[5] (collectively, "Nasdaq Securities").[6]

The Exchange notes that its New Market Model Pilot ("NMM Pilot"), which, among other things, eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker ("DMM"),[7] is also scheduled to end on September 30, 2010.[8] The timing of the operation of the UTP Pilot Program was designed to correspond to that of the NMM Pilot. In approving the UTP Pilot Program, the Commission acknowledged that the rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to the UTP Pilot Program are consistent with the Act [9] and noted the similarity to the NMM Pilot, particularly with respect to DMM obligations and benefits.[10] Furthermore, the UTP Pilot Program rules pertaining to the assignment of securities to DMMs are substantially similar to the rules implemented through the NMM Pilot.[11] The Exchange has similarly filed to extend the operation of the NMM Pilot until the earlier of Commission approval to make the NMM Pilot permanent or January 31, 2011.[12]

Extension of the UTP Pilot Program in tandem with the NMM Pilot, both from September 30, 2010 until the earlier of Commission approval to make such pilots permanent or January 31, 2011, will provide for the uninterrupted trading of Nasdaq Securities on the Exchange on a UTP basis and thus continue to encourage the additional utilization of, and interaction with, the NYSE Amex Equities market, and provide market participants with improved price discovery, increased liquidity, more competitive quotes and greater price improvement for Nasdaq Securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal is consistent with (i) Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–NYSEAmex-2010–31) (Notice of Filing of Amendment Nos. 2 and 3, and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To Adopt as a Pilot Program a New Rule Series for the Trading of Securities Listed on the Nasdaq Stock Market Pursuant to Unlisted Trading Privileges).

[4] *See* Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008) (Notice of filing and immediate effectiveness of Amendment No. 20 to the UTP Plan). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 2091 (April 27, 2007) (S7–24–89). In March 2009, the Exchange changed its name to NYSE Amex LLC. *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[5] 15 U.S.C. 78*l.*

[6] "Nasdaq Securities" is included within the definition of "security" as that term is used in the NYSE Amex Equities Rules. *See* NYSE Amex Equities Rule 3. In accordance with this definition, Nasdaq Securities are admitted to dealings on the Exchange on an "issued," "when issued," or "when distributed" basis. *See* NYSE Amex Equities Rule 501.

[7] *See* NYSE Amex Equities Rule 103.

[8] *See* Securities Exchange Act Release No 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex-2009–65). See also Securities Exchange Act Release No. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex-2009–83). *See also* Securities Exchange Act Release No. 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex-2010–28).

[9] 15 U.S.C. 78.

[10] *See supra* note 1 [sic], at 41271.

[11] *Id.*

[12] *See* SR–NYSEAmex-2010–86.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; (ii) Section 11A(a)(1) of the Act,[15] in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets; and (iii) Section 12(f) of the Act,[16] which governs the trading of securities pursuant to UTP consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities. Under the UTP Pilot Program Nasdaq Securities trade on the Exchange pursuant to rules governing the trading of Exchange-Listed securities that previously have been approved by the Commission. NYSE Amex made certain minor modifications to the operation of these rules, and added certain new rules, to accommodate the trading of Nasdaq Securities on a UTP basis; the Commission also approved all of these modifications and additions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–89 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–89 and should be submitted on or before October 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–22859 Filed 9–13–10; 8:45 am]

**BILLING CODE 8010–01–P**

[15] 15 U.S.C. 78k-1(a)(1).

[16] 15 U.S.C. 78l(f).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–62858; File No. SR–BATS–2010–023]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

September 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2010, BATS Exchange, Inc. ("BATS" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to modify its fee schedule applicable to Members [5] of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 1, 2010.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify the "equities pricing" section of its fee schedule to: (i) adopt pricing for certain new routing strategies that the Exchange recently adopted; (ii) modify its pricing for Destination Specific Orders executed at NYSE Arca; (iii) eliminate a currently dormant market data product from its fee schedule; and (iv) change the name of one of its routing strategies. In addition, the Exchange proposes to modify fees applicable to options trading by eliminating certain clearing fees that it currently passes on to its Members.

(i) Adoption of Fees for New Parallel Routing Strategies

The Exchange recently adopted rules permitting it to offer certain new routing strategies, and plans on offering such routing strategies in the near future.[6] Accordingly, the Exchange proposes to adopt fees applicable to such routing strategies. As proposed, the Exchange will offer both Parallel D and Parallel 2D routing at the same rate as it offers its CYCLE and RECYCLE routing strategies.[7] Specifically, the Exchange proposes to charge $0.0028 per share for executions that occur at other trading venues as a result of either Parallel D or Parallel 2D routing. The Exchange proposes to offer its Parallel T routing strategy with a charge of $0.0033 per share for executions that occur at other trading venues as a result of such routing. To be consistent with these proposed fees and the current fee structure for CYCLE and RECYCLE routed executions, the Exchange proposes to charge 0.28% of the total dollar value of the execution for any security priced under $1.00 per share that is routed away from the Exchange through Parallel D or Parallel 2D. Similarly, and based on the charge of $0.0033 per share for Parallel T routing, the Exchange proposes to charge 0.33% of the total dollar value of the execution for any security priced under $1.00 per share that is routed away from the Exchange through Parallel T.

(ii) NYSE Arca Destination Specific Orders

The Exchange proposes to modify its fee schedule applicable to use of the Exchange in order to amend the fees for its BATS + NYSE Arca destination specific routing option to continue to offer a "one under" pricing model. The Exchange has previously provided a discounted price fee for Destination Specific Orders routed to certain of the largest market centers measured by volume (NYSE, NYSE Arca and NASDAQ), which, in each instance has been $0.0001 less per share for orders routed to such market centers by the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as "One Under" pricing). Based on changes in pricing at NYSE Arca, BATS is proposing a change to its price for BATS + NYSE Arca Destination Specific Orders to align its fees so they are $0.0001 less per share for orders routed to NYSE Arca. Specifically, the Exchange proposes to increase the fee charged for BATS + NYSE Arca Destination Specific Orders executed at NYSE Arca in Tape A and C securities from $0.0028 to $0.0029 per share.

(iii) Deletion of Data Product

In order to avoid confusion, the Exchange proposes to delete a reference on its fee schedule to a specific data product that it is not currently offering. Earlier this year, the Exchange proposed and received approval to offer certain market data products for a fee for the first time. Market Insight was one such product proposed and approved to be offered by the Exchange. However, the Exchange has decided not to offer this product at this time, and thus, proposes deletion of reference to the product from its fee schedule to avoid confusion. If the Exchange does decide to offer Market Insight as approved, it will provide notice to its Members and will file a rule proposal to reinstate reference to Market Insight on its fee schedule.

(iv) Name Change of Routing Strategy

The Exchange has decided to re-brand one of its routing strategies, currently referred to as "DART," as the "Dark Routing Technique" or "DRT". Accordingly, the Exchange proposes modification of the "DART" acronym throughout the fee schedule to "DRT".

(v) Options Clearing Charges

The Exchange currently charges $0.05 per contract for its standard options routing service and $0.10 per contract for Directed ISOs routed to away markets, and, in addition, passes through all destination exchange fees for executions at away markets. Effective June 1, 2010, the Exchange began passing through to Options Members, in addition to destination exchange fees, the actual clearing fees billed to the Exchange for the execution of orders routed from the Exchange. The Exchange proposes to eliminate the clearing fee pass through charge, both to simplify pricing of its routing services and to encourage Options Members to utilize the Exchange's routing services.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

[6] *See* Securities Exchange Act Release No. 62404 (June 30, 2010), 75 FR 39303 (July 8, 2010) (SR–BATS–2010–017).

[7] *See* Rule 11.13(a)(3).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder,[11] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BATS–2010–023 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2010–023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2010–023 and should be submitted on or before October 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–22836 Filed 9–13–10; 8:45 am]

**BILLING CODE 8010–01–P**

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–62856; File No. SR–NYSEArca–2010–68]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Listing and Trading of Shares of the PIMCO Build America Bond Strategy Fund

September 7, 2010.

**I. Introduction**

On July 14, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the PIMCO Build America Bond Strategy Fund (the "Fund") of the PIMCO ETF Trust (the "Trust") under NYSE Arca Equities Rule 8.600 (Managed Fund Shares). The proposed rule change was published in the **Federal Register** on August 4, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by the Trust.[4] Pacific Investment Management Company LLC ("PIMCO") is the investment adviser ("Adviser") for the Fund.[5] State Street Bank & Trust Co. is the custodian and transfer agent for the Fund. The Trust's Distributor is Allianz Global Investors Distributors LLC (the "Distributor"), an indirect subsidiary of Allianz Global Investors of America L.P. ("AGI"), PIMCO's parent company.[6] The Distributor is a registered broker-dealer.[7]

The Fund seeks to achieve its investment objective by investing under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62585 (July 28, 2010), 75 FR 47045 ("Notice").

[4] The Trust is a Delaware statutory trust that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act"). *See* Registration Statement on Amendment No. 15 to Form N–1A for the Trust filed with the Securities and Exchange Commission on March 10, 2010 (File Nos. 333–155395 and 811–22250) (the "Registration Statement").

[5] The Exchange represents that the Adviser, as the investment adviser of the Fund, and its related personnel, are subject to Investment Advisers Act Rule 204A–1.

[6] The Fund has received an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act"). In compliance with Commentary .04 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a). *See* email from Tim Malinowski, Senior Director, Global Index and Exchange Traded Funds, Exchange, to Ronesha Butler and Kristie Diemer, Special Counsels, Division, Commission, dated September 2, 2010, clarifying applicability of Commentary .04.

[7] Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is affiliated with a broker-dealer, Allianz Global Investors Distributors LLC, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

normal circumstances at least 80% of its assets in taxable municipal debt securities publicly issued under the Build America Bond program. The Build America Bond program was created as part of the American Recovery and Reinvestment Act of 2009 (the "2009 Act") ("Build America Bonds"). The Fund invests in U.S. dollar-denominated Fixed Income Instruments that are primarily investment grade, but may invest up to 20% of its total assets in high yield securities ("junk bonds") rated B or higher by Moody's Investors Service, Inc., or equivalently rated by Standard & Poor's Ratings Services or Fitch, Inc., or, if unrated, determined by PIMCO to be of comparable quality.[8]

The average portfolio duration of the Fund normally varies within two years (plus or minus) of the duration of The Barclays Capital Build America Bond Index, which as of June 25, 2010, was approximately 12 years.

Municipal bonds generally are issued by or on behalf of states and local governments and their agencies, authorities and other instrumentalities. Unlike most municipal bonds, interest received on Build America Bonds is subject to federal and state income tax. Pursuant to the 2009 Act, issuers of "direct pay" Build America Bonds (*i.e.,* taxable municipal bonds issued to provide funds for qualified capital expenditures) are entitled to receive payments from the U.S. Treasury over the life of the bond equal to 35% (or 45% in the case of Recovery Zone Economic Development Bonds) of the interest paid. The federal interest subsidy continues for the life of the bonds.[9]

The Exchange states that the Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 applicable to Managed Fund Shares [10] and that the Shares will comply with Rule 10A–3 under the Act,[11] as provided by NYSE Arca Equities Rule 5.3.

Additional information regarding the Trust, the Fund, the Shares, the Fund's investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings and policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[12]

## III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [13] and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line, and the Exchange will disseminate the Portfolio Indicative Value ("PIV") at least every 15 seconds during the Core Trading Session on the Exchange. In addition, the Fund will make available on a website on each business day the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio") that will form the basis for the calculation of the NAV, which will be determined as of the close of the regular trading session on the Exchange (ordinarily 4 p.m. Eastern Time) on each business day. The Fund's website will also include additional quantitative information updated on a daily basis relating to trading volume, prices, and NAV. Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day via electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

The Commission further believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made

[8] According to the Registration Statement, the Fund may invest in "Fixed Income Instruments," consistent with the Fund's objective. Fixed Income Instruments, as used generally in the Registration Statement, include:

- Securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises ("U.S. Government Securities");
- Corporate debt securities of U.S. and non-U.S. issuers, including corporate commercial paper;
- Mortgage-backed and other asset-backed securities;
- Inflation-indexed bonds issued both by governments and corporations;
- Trust preferred securities;
- Delayed funding loans and revolving credit facilities;
- Bank certificates of deposit, fixed time deposits and bankers' acceptances;
- Repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments;
- Debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises;
- Obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and
- Obligations of international agencies or supranational entities.

[9] Issuance of Build America Bonds will cease on December 31, 2010 unless the relevant provisions of the 2009 Act are extended. In the event that the Build America Bond program is not extended, the Build America Bonds outstanding at such time will continue to be eligible for the federal interest rate subsidy, which continues for the life of the Build America Bonds; however, no bonds issued following expiration of the Build America Bond program will be eligible for the federal tax subsidy. If the Build America Bond program is not extended, the Fund will evaluate the Fund's investment strategy and make appropriate changes that it believes are in the best interests of the Fund, including changing the Fund's investment strategy to invest in other taxable municipal securities.

The Exchange has represented that in the event the Build America Bond program is not extended and the Fund determines to change its investment strategy, the Exchange will file a proposed rule change pursuant to Rule 19b–4 under the Act to permit continued listing of the Fund, and the Fund has represented to the Exchange that it will not change its investment strategy until such proposed rule change is approved by the Commission or becomes effective under Section 19(b) of the Act.

[10] The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. *See* Notice, *supra* note 3.

[11] 17 CFR 240.10A–3.

[12] *See supra* notes 3 and 4.

[13] 15 U.S.C. 78f.

[14] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

available to all market participants at the same time.[17] Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants.[18] Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[19] The Exchange represents that the Adviser is affiliated with a broker-dealer, Allianz Global Investors Distributors LLC, and has implemented a "fire wall" between it and its broker-dealer affiliate with respect to access to information concerning the composition and/or changes to the Fund's portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[20]

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600(d).

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Fund will be in compliance with Rule 10A–3 under the Act.

(5) The Fund will not invest in non-U.S. equity securities.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSEArca–2010–68), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–22835 Filed 9–13–10; 8:45 am]

**BILLING CODE 8010–01–P**

[17] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[18] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[19] *Id.* Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[20] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

## [Release No. 34–62842; File No. SR–FINRA–2010–030]

## Self-Regulatory Organizations; Financial Industry Regulatory Authority; Order Granting Approval of a Proposed Rule Change To Adopt FINRA Rule 11000 Series (Uniform Practice Code) in the Consolidated FINRA Rulebook

September 3, 2010.

## I. Introduction

On June 14, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–FINRA–2010–030 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on July 12, 2010.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

## II. Description

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"), FINRA will adopt the NASD Rule 11000 Series (Uniform Practice Code ["UPC"]) into the Consolidated FINRA Rulebook, subject to certain amendments described below.[3] The UPC was originally adopted on January 20, 1941, and became effective on August 1, 1941. The UPC prescribes the manner in which over-the-counter securities transactions other than those cleared through a registered clearing agency are compared, cleared, and settled between member firms.

As a general matter, the UPC does not apply to:

a. Transactions in securities between members that are compared, cleared, or settled through the facilities of a registered clearing agency;

b. Transactions in securities exempted under Section 3(a)(12) of the Act or in municipal securities as defined in Section 3(a)(29) of the Act;

c. Transactions in redeemable securities issued by companies registered under the Investment Company Act of 1940; or

d. Transactions in Direct Participation Program securities.

The UPC is designed to make uniform, where practicable, custom, practice, usage, and trading technique in the investment banking and securities business, particularly with respect to operational and settlement issues. This can include such matters as trade terms, deliveries, payments, dividends, rights, interest, stamp taxes, claims,

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 62454 (July 6, 2010), 75 FR 39715 (July 12, 2010).

[3] The current FINRA rulebook consists of (1) FINRA Rules, (2) NASD Rules, and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA's *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

assignments, powers of substitution, due-bills, transfer fees, and marking to the market. The UPC, among other things, was created so that the transaction of day-to-day business by members may be simplified and facilitated.

*1. UPC Rules Generally*

FINRA will transfer a significant portion of the NASD Rule 11000 Series into the Consolidated FINRA Rulebook with the minor changes detailed below.[4] Specifically, FINRA will update certain terminology in the UPC. For example, NASD Rule 11120 defines the term "written notice" as used in the UPC to include a notice delivered by hand, letter, teletype, telegraph, TWX, facsimile transmission, or other comparable media. FINRA will delete the references to teletype, telegraph, and TWX and will include notice delivered by electronic mail. In addition, FINRA will update cross-references throughout the rules and will make other minor changes primarily to reflect the new conventions of the Consolidated FINRA Rulebook.

*2. Proposed FINRA Rules 11111 (Refusal to Abide by Rulings of the Committee) and 11112 (Review by Panels of the UPC Committee)*

FINRA will adopt two new provisions that are largely based on former NASD IM–11890–1 (Refusal to Abide by Rulings) and NASD IM–11890–2 (Review by Panels of the UPC Committee).[5] The provisions of former NASD IM–11890–1 will be incorporated into and merged with current NASD IM–11110 (Refusal to Abide by Rulings of the Committee) and adopted as proposed new FINRA Rule 11111 as the two provisions are largely identical. Former NASD IM–11890–1 provided that a refusal by a member to take action necessary to effectuate a final decision of a FINRA officer or the UPC Committee under NASD Rule 11890 (Clearly Erroneous Transactions) would be considered conduct inconsistent with just and equitable principles of trade. Current NASD IM–11110 provides that a refusal by a member to abide by an official ruling of the UPC Committee, acting within its appropriate sphere, shall be considered conduct inconsistent with just and equitable principles of trade. As approved, the new FINRA Rule 11111 will merge the two provisions and provide that a refusal by a member to take action necessary to effectuate a final decision of a FINRA officer or the UPC Committee under the UPC Code (FINRA Rule 11000 Series) or other FINRA rules that permit review of FINRA decisions by the UPC Committee will be considered conduct inconsistent with just and equitable principles of trade.

The provisions of former NASD IM–11890–2, which applied only to rulings under NASD Rule 11890, will be adopted as proposed new FINRA Rule 11112 (Review by Panels of the UPC Committee) and will be generally applicable to all rulings by the UPC Committee. The new FINRA Rule 11112 will provide that a decision of the UPC Committee may be rendered by a panel of the Committee, which shall consist of three or more members of the UPC Committee, provided no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a firm whose revenues from market making activity exceed ten percent of its total revenues.

*3. Proposed FINRA Rules 11810 (Buying-In) and 11810.03 (Sample Buy-In Forms)*

As approved by this filing, the current NASD Rule 11810 (Buying-In) will be adopted as FINRA Rule 11810 (Buy-In Procedures and Requirements) in the Consolidated FINRA Rulebook with certain clarifications and changes. Incorporated NYSE Rules 282 (Buy-in Procedures) and related Supplementary Material paragraphs .10–.80 be deleted. The changes are intended to harmonize the differences between the NYSE rule and the NASD rule and to update certain procedures and time frames. FINRA will also adopt NASD IM–11810, which contains the sample buy-in forms, into the Consolidated FINRA Rulebook as accompanying Supplementary Material .03 to FINRA Rule 11810 with minor changes to replace references to NASD with FINRA.

As approved, FINRA Rule 11810 will continue to set forth the required steps that members must follow to effect the "buy-in" of securities including the procedures to be followed in issuing a "buy-in" notice, the contents of such notice, the expectations of the receiving party to respond to such notice, and the time frames in which a "buy-in" may be issued, retransmitted, and effected.

FINRA will also make certain minor clarifications and add the following more substantive provisions to proposed FINRA Rule 11810, which are currently contained in NYSE Rule 282 either with or without modifications, as specified:

a. Include in paragraph (a) a statement clarifying that the rule does not apply to, among other things, securities contracts that are subject to the requirements of a national securities exchange or a registered clearing agency.

b. Amend certain time frames for action specified in the proposed rule:

i. Clarify the time frames within which members must take action to effect the "buy-in" of securities as required therein. Specifically, the NASD rule requires that a member act within the specified local time at the member's location whereas the NYSE rule requires action to be taken based on Eastern Time (ET). To promote operational consistency among members, the proposal would amend the required time frame for action to be ET.

ii. Amend the current time frames specified by the NASD and NYSE rules for the acknowledgement of a "buy-in" notice and the notification of an execution of the buy-in from 5 p.m. to 6 p.m. ET. FINRA understands that the 5 p.m. time may be operationally difficult for members to achieve in some cases and the 6 p.m. ET time frame would be more operationally feasible.

iii. Add Supplementary Material .01 (Early Closure of Markets) to clarify that in the event of an announced early closure of the market upon which the security subject to the "buy-in" notice is traded, members may take the action required by the rule not earlier than one hour prior to the announced early closure of such market.

c. Add new paragraph (b)(4) to specify that (1) the buyer must maintain as part of its records, confirmation of receipt of the notice by the seller and (2) if the seller does not accept the notice of "buy-in," it must reject it by response to the buyer no later than 6 p.m. ET on the same date that it receives such notice, and in the absence of doing so, the seller will have been deemed by the buyer to have accepted such notice. The provision would clarify that the seller, in such case, would have the right to request proof of the fail obligation from the buyer, which the buyer must deliver to the seller prior to the effective date of the "buy-in." However, in no event would a buyer be entitled to a "buy-in" that exceeds the liability of a seller under an unsettled securities contract because of the failure of the seller to reject a "buy-in" notice as provided in the rule, and a buyer may not execute a "buy-in" notice to such extent the buyer fails to deliver the proof of fail

[4] NASD Rules 11890 (Clearly Erroneous Transactions), IM–11890–1 (Refusal to Abide by Rulings), and IM–11890–2 (Review by Panels of the UPC Committee) were adopted, with significant changes, into the Consolidated FINRA Rulebook as the FINRA Rule 11890 Series (Clearly Erroneous Transactions) pursuant to a separate rule filing and are not being addressed as part of this rule filing. Securities Exchange Act Release No. 61080 (Dec. 1, 2009), 74 FR 64117 (Dec. 7, 2009) (SR–FINRA–2009–068).

[5] *Id.*

obligation in accordance with the requirements of the rule. Requirements (1) and (2) described above are contained in the current NYSE rule in a similar form except FINRA will change the time to 6 p.m. ET. FINRA is also adding new provisions regarding "passive acceptance" of the "buy-in" by the seller as described above, subject to certain safeguards for the benefit of the seller such as requiring the buyer to provide the proof of fail obligation and "buying-in" the seller only for the securities contract amount in accordance with the proposed rule.

d. Add new paragraph (b)(5) to specify that the receiving party shall immediately retransmit a notice of "buy-in" to other parties from which the securities may be due in the form of a retransmitted "buy-in" notice. Consistent with new paragraph (b)(4) described above, the provision would clarify that each party receiving a retransmitted "buy-in" notice will be required to maintain confirmation of receipt of the notice as part of its books and records and either reject a retransmitted "buy-in" notice that it has received by 6 p.m. ET on the date such notice is received or be deemed to have accepted the notice ("passive acceptance"). The safeguards described above in proposed paragraph (b)(4) would also apply to sellers receiving a retransmitted notice.

e. Add new paragraph (b)(6), which is contained in the NYSE rule, to clarify that when a notice of "buy-in" or a retransmitted notice thereof is given for less than the full amount of securities due, it shall not be for less than one trading unit.

f. Amend paragraph (d) as follows:

i. Retitle proposed paragraph (d) from the current rule title "Seller's Failure to Deliver After Receipt of Notice" to "Procedures for Closing of Contracts" to better align the title with the content of that paragraph.

ii. Amend the time frames, as discussed generally above, to generally require the party receiving the "buy-in" notice to deliver the securities to the party issuing the notice by 3 p.m. ET on the effective date of the "buy-in" notice.

iii. Add language to clarify that if the buyer/issuing party prior to executing the "buy-in" is notified by the seller/delivering party that some or all of the securities are in the seller's physical possession and will be delivered to the issuing party then the order to "buy-in" shall not be executed with respect to such securities, and the member that initiated the original order to "buy-in" shall accept and pay for such securities. However, if such securities are not promptly delivered, the seller that represented that it would make such delivery shall be liable for any resulting damages.

iv. Add language contained in the NYSE rule to clarify the operation of the rule when a retransmitted buy-in notice is sent to the defaulting party but is not received by such party prior to the delivery of shares or the execution of the "buy-in." In such case, the sender of the buy-in notice may unless otherwise agreed promptly reestablish by a new sale the contract subject to the notice of "buy-in."

g. Amend paragraph (h) as follows:

i. Amend the time frame, as discussed above, for notice to be made to the party for whose account the securities were bought to 6 p.m. ET on the date of execution of the "buy-in."

ii. Add new language, not contained in either legacy rule, to clarify that the confirmation of the executed "buy-in" provided for by the rule shall be forwarded to the party entitled to the confirmation by no later than 9:30 a.m. ET on the following business day after the execution of the "buy-in."

iii. Add a provision contained in the NYSE rule that requires that a statement of any resulting money differences from the execution of the "buy-in" be provided immediately and that such money differences shall be paid by no later than 3 p.m. ET on the business day after the settlement date of the executed "buy-in."

h. Amend paragraph (i) to clarify, as provided in the NYSE rule, that notification of all close-outs as provided by the paragraph shall be sent immediately to the member being closed-out pursuant to the confirmation provisions of the Rule 11200 Series at least thirty minutes before such "close-out."

i. Add Supplementary Material .02 to clarify, as provided in the NYSE rule, that where securities have been delivered by the seller after the "buy-in" order has been placed but not executed, such securities may be returned to the seller if the "buy-in" was executed in accordance with the rule before it could reasonably be cancelled by the initiating party.

*4. Proposed FINRA Rule 11820 (Selling-Out)*

Current NASD Rule 11820 (Selling-Out) will be adopted as FINRA Rule 11820 (Selling-Out) into the Consolidated FINRA Rulebook, subject to minor changes. There is no comparable NYSE rule. NASD Rule 11820 generally requires the party executing the "sell-out" to notify the buyer on the day of execution no later than the close of business local time where the buyer maintains his office of the quantity sold and the price received. FINRA will conform the time frames in this new rule to the time frames in the new FINRA Rule 11810 (Buy-In Procedures and Requirements). Specifically, this new rule will replace the requirement to provide notice "no later than the close of business local time, where the buyer maintains his office" with the requirement that such notice must be provided no later than "6 p.m. ET." FINRA believes this change provides clarity and uniformity to the industry. In addition, the rule will amend certain references in the proposed rule from "should" to "shall." Specifically, in paragraph (b), notification by the party executing a "sell-out" shall be in written or electronic form, and a formal confirmation of such sale shall be forwarded as promptly as possible after execution of the "sell-out."

*5. Proposed FINRA Rule 11860 (COD Orders)*

FINRA will adopt NASD Rule 11860 (Acceptance and Settlement of COD Orders) as FINRA Rule 11860 (COD Orders) into the Consolidated FINRA Rulebook subject to minor changes and to delete NASD Rule 3370 (Purchases) and Incorporated NYSE Rule 387 (COD Orders) and its Supplementary Material paragraphs .10–.60, NYSE Rule 387 Interpretations /01–/18, Rule 430 (Partial Delivery of Securities to Customers on C.O.D. Purchases), and NYSE Rule 430 Interpretation /01.

NASD Rule 11860 and NYSE Rule 387 provide generally that no member can accept an order from a customer pursuant to an arrangement whereby payment for the securities purchased or delivery of the securities sold is to be made to or by an agent of the customer unless certain specified procedures are followed. NASD Rule 3370 and NYSE Rule 430 both generally provide that no member or associated person may accept a customer's purchase order for securities unless it has first ascertained that the customer placing the order or its agent has agreed to receive the securities against payment in an amount equal to the execution price even though such purchase may represent only a part of a larger order. NYSE Rule 430 has an exception for obligations of the U.S. government.

As approved, FINRA Rule 11860 will continue the requirement in NYSE Rule 430 and NASD Rule 3370 that members prior to accepting a purchase order for a security ascertain that the customer or its agent will receive against payment securities in an amount equal to any execution confirmed to the customer

even if such execution may represent a partial fill of the order. FINRA will eliminate the exemption for transactions in U.S. government obligations as provided by Rule 430. Further, the rule as being adopted will continue to require the use of either a Clearing Agency or a Qualified Vendor for the electronic confirmation and affirmation of all depository eligible transactions. FINRA is clarifying that the new rule will, similar to NYSE Rule 387, apply to (1) transactions of foreign customers and broker-dealers that settle in the U.S. and (2) eligible sinking funds and/or dividend reinvestment transactions. The new rule will add a new requirement that is contained in NYSE Rule 387 that requires a "Qualified Vendor" to provide FINRA with copies of its required submissions to the SEC staff.

*6. Proposed FINRA Rules 11870 (Customer Account Transfer Contracts) and 11870.03 (Sample Transfer Instruction Forms)*

FINRA is adopting NASD Rule 11870 as FINRA Rule 11870 (Customer Account Transfer Contracts) into the Consolidated FINRA Rulebook with the following changes. There is no comparable NYSE Incorporated Rule.[6] FINRA is also adopting NASD IM–11870, which contains the Sample Transfer Instruction Forms, into the Consolidated FINRA Rulebook with minor changes to replace references to NASD with FINRA.

Generally, NASD Rule 11870 provides that when a brokerage customer wishes to transfer his or her account to another member and gives written notice of that fact to the receiving member, both members must expedite and coordinate the transfer. The new FINRA Rule 11870 would continue to set forth the required steps that members must follow to effect the transfer of customers' accounts, including the initial request to transfer an account, the time frame in which a transfer request must be acted upon, the validation of such transfer request, and the documentation required to effect the transfer. FINRA will add to proposed FINRA Rule 11870 minor clarifications as well as the following more substantive, which were interpretations to the prior version of NYSE Rule 412:[7]

a. Add a new provision regarding the procedures for the transfer of book-entry mutual fund shares that clarifies the obligations of the parties when transferring a customer's positions in such securities. FINRA will add this provision to paragraph (f)(9) of proposed FINRA Rule 11870.

b. Add a definition of the term "participant in a registered clearing agency" for purposes of the rule to mean a member that is eligible to use the agency's automated customer securities account transfer capabilities.

c. Add Supplementary Material .01 to clarify that members must establish written procedures to effect and supervise the transfer of customer account assets pursuant to the requirements of the proposed rule.

d. Add Supplementary Material .02 to require members to inform customers with respect to retirement plan securities that the choice of the method of disposition of such assets may result in liability for the payment of taxes and penalties.

e. Amend the time frames in the new rule for notice and completion of close-outs of fail contracts resulting from the not completing a transfer of a customer's account to conform to the time frames for all close-outs as specified in proposed FINRA Rule 11810 (Buy-In Procedures and Requirements). Specifically, the new rule will require the receiving member to provide notice to the carrying member not later than 12 noon ET two business days preceding the execution of the proposed close-out (as opposed to 12 noon "his" time). In addition, the rule will require that every notice of close-out state that the securities may be closed out "unless delivery is effected at or before a certain specified time, which may not be prior to 3 p.m. ET," as opposed to "the local time in the community where the carrying member maintains his office." The new rule will also replace the requirement that the party executing the "close-out" notify the seller as to the quantity purchased and the price paid not later than "the close of business, local time, where the seller maintains his office," with the requirement to provide such notice not later than "6 p.m. ET on the date of the execution of such 'close-out'."

f. Amend certain references in the new rule from "should" to "shall." Specifically, (1) In paragraph (f) that the obligation that fail contracts established pursuant to the rule shall be clearly marked or captioned as such and that a receiving member shall reject delivery of a security that cannot be deemed a safekeeping position against a fail contract; (2) in paragraph (h) that notification shall be in written or electronic form and that confirmation of purchase along with a billing or payment shall be forwarded as promptly as possible; (3) in paragraph (i) that notification shall be in written or electronic form; and (4) in paragraph (m) that when both members are participants in a registered clearing agency, the securities account asset transfer procedures shall be accomplished in accordance with the rule and the rules of the registered clearing agency.

g. Eliminate paragraph (n)(3) which requires that a copy of each customer account transfer instruction issued on an "ex-clearing house" basis be sent to the local District Office of NASD having jurisdiction over the carrying member. FINRA believes that a majority of customer account transfers now occur between members of a clearing agency and that the volume of transactions that occur "ex-clearing" has significantly decreased.

FINRA will announce the implementation date of the rule change in a *Regulatory Notice* to be published no later than ninety days following the date of the approval of this rule change. The implementation date will be no later than 365 days following the date of the approval of this rule change.

## III. Discussion

Section 15A(b)(6) of the Act requires, among other things, that FINRA rules must be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[8] The rule change amends FINRA's rules so as to adopt a majority of the UPC Rules into the new Consolidated FINRA Rulebook without significant changes in order to update and to reflect the new conventions of the Consolidated FINRA Rulebook. The rule change also updates certain other UPC Rules to reflect current industry practices. As one part of a larger undertaking to consolidate the rules of the NASD and NYSE, FINRA's new rules will apply to all registered broker-dealers, which should further promote the just and equitable principles of trade and, in general, better protect investors and the public interest.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with FINRA's

[6] Previously, NYSE Rule 412 (Customer Account Transfer Contracts) and its related interpretations similarly regulated the transfer of customer accounts. FINRA eliminated NYSE Rule 412 and its interpretations from the Transitional Rulebook as part of a rule change to reduce regulatory duplication for Dual Members during the period before completion of the Consolidated FINRA Rulebook. The NYSE subsequently amended its version of NYSE Rule 412 to state that NYSE members and member organizations shall comply with NASD Rule 11870, concerning the transfer of customer accounts between members, and any amendments thereto, as if such rule were part of the NYSE's rules. Securities Exchange Act Release No. 58533 (Sept. 12, 2008), 73 FR 54652 (Sept. 22, 2008) (Approval Order; SR–FINRA–2008–036).

[7] *Id.*

[8] 15 U.S.C. 78*o*–3(b)(6).

obligation under Section 15A of the Exchange Act, as amended, and the rules and regulations thereunder.[9]

**IV. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FINRA–2010–030) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–22783 Filed 9–13–10; 8:45 am]

**BILLING CODE 8010–01–P**

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 7113]**

### U.S. Department of State Advisory Committee on Private International Law: Public Meeting on the Work of the UNCITRAL Working Group on Procurement

The United Nations Commission on International Trade Law (UNCITRAL) Working Group on Procurement will next meet November 1–5, 2010 in Vienna. At that meeting, the Working Group will continue its work on revisions to the 1994 Model Law on Procurement of Goods, Construction and Services, and it may also begin a review of a Guide to Enactment that will accompany the revised Model Law.

In preparation for that meeting, a public meeting will be held, under the auspices of the Department of State's Advisory Committee on Private International Law, to obtain the views of concerned stakeholders.

*Time and Place:* The public meeting will take place at The George Washington University Law School, Faculty Conference Center, 5th floor, 2000 H Street, NW., Washington, DC on October 21, 2010. The meeting will begin at 9:30 a.m. and is expected to last no later than noon. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

*Public Participation:* It is requested that persons wishing to attend contact Trisha Smeltzer prior to October 14, 2010, at *smeltzertk@state.gov* or 703–812–2382 and provide their name, e-mail address, and affiliation. A member of the public requesting reasonable accommodation should make his or her request upon registering for the meeting. Such requests received after October 19 will be considered, but might not be possible to fulfill. Please contact Ms. Smeltzer for additional meeting information, including teleconferencing dial-in details.

Dated: September 7, 2010.

**Keith Loken,**

*Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.*

[FR Doc. 2010–22890 Filed 9–13–10; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Draft Re-Evaluation for Environmental Impact Statement: Sikorsky Memorial Airport, Stratford, CT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability.

**SUMMARY:** The FAA is issuing this notice to advise the public that a Draft Re-Evaluation for an Environmental Impact Statement (EIS) has been prepared for Sikorsky Memorial Airport in Stratford, Connecticut.

**FOR FURTHER INFORMATION CONTACT:** Richard Doucette, Environmental Program Manager, Federal Aviation Administration New England, 12 New England Executive Park, Burlington, MA. (781) 238–7613.

**SUPPLEMENTARY INFORMATION:** The FAA is making available a Draft Re-Evaluation document, which evaluates the impacts of Runway Safety Areas and other airfield improvements at Sikorsky Memorial Airport in Stratford, Connecticut. The document will assist the FAA in determining the suitability of the May 1999 EIS and October 1999 Record of Decision (ROD). No action has been taken on the prior EIS or ROD. The Re-Evaluation document is available for review during normal business hours at the following locations:

FAA New England Region, 16 New England Executive Park, Burlington, MA, 781–238–7613.

Stratford Public Library, 2203 Main St., Stratford, CT, 203–385–4161.

Bridgeport Public Library, Borroughs Bldg., 925 Broad St., Bridegport, CT, 203–576–7777.

Igor Sikorsky Memorial Airport, Administration Bldg., 1000 Great Meadow Dr., Stratford, CT, 203–576–8162.

A public hearing will be held to solicit public comment on the document. The hearing will be held on September 22 at the Stratford Ramada Inn, 225 Lordshop Blvd., Stratford, Connecticut at 7 p.m. Public comments will be accepted through September 30, 2010.

Issued on: August 27, 2010.

**LaVerne F. Reid,**

*Manager, Airports Division.*

[FR Doc. 2010–22823 Filed 9–13–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Public Meeting/Working Group With Industry on Volcanic Ash

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting hosted by the FAA's Aviation Weather Group in coordination with the National Oceanic and Atmospheric Administration (NOAA). The meeting is to identify operational needs for Volcanic Ash information in support of aviation from stakeholders.

**DATES:** The meeting will be held on November 5, 2010, from 9 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW., Bessie Coleman Room, Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven R. Albersheim, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 385–7185; e-mail: *steven.albersheim@faa.gov* or Mr. Stewart Stepney, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 385–7182; e-mail: *stewart.stepney@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The FAA is issuing this notice to advise the public of a meeting to discuss the establishment of operational requirements for the reporting and forecasting of volcanic eruptions and the associated ash cloud. It has been well documented that volcanic ash clouds are a hazard to en

route aircraft and airport operations. The FAA, in collaboration with NOAA, provides information on volcanic ash. There is a need to better understand the content and characteristics of information on volcanic ash to support operational decisions. This information will be used to help direct R&D effort for improved services in support of NextGen. In addition, the information gathered from this meeting will assist FAA in its effort to collaborate with the international community to promote global harmonization on the functional and performance requirements for volcanic ash. The Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2) requires that public notice of this meeting be announced in the **Federal Register**.

*Purpose:* The FAA is in the process of reviewing existing operational requirements as implemented in advisories and warning messages to Airline Operations Centers, Flight Crews, and Traffic Flow Management. In that regard, the FAA has defined an initial set of volcanic ash functional and performance requirements to support NextGen operations. These requirements must be validated with users in order to provide sound guidance for R&D investments. The purpose of the meeting announced in this **Federal Register** Notice is to assist the FAA in refining these requirements which will be used to drive R&D for improvement in volcanic ash detection, modeling and forecasting. The specific objective of the meeting is to identify performance requirements in terms of accuracy, latency, reliability, resolution, location, density, etc., of volcanic ash information resulting from volcanic ash modeling, observation, and forecasting. Public Participation: Due to space constraints, interested parties will need to register for this activity. Deadline for registration is October 31, 2010 or when capacity of the facility is met. We are asking anyone interested in attending to notify Steven Albersheim or Stewart Stepney at the phone or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC on September 7, 2010.

**Richard J. Heuwinkel,**

*Team Manager, Aviation Weather Policy and Requirements.*

[FR Doc. 2010–22822 Filed 9–13–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 22nd Meeting: RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services.

**DATES:** The meeting will be held October 5–7, 2010 from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at Eurocontrol, Jupiter Conference Room, Brussels, Belgium. Contact Person: Gerard Terrien, Eurocontrol, Phone: 32–2–729–3581.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services meeting. The agenda will include:

**5 October—Tuesday**

- 9 a.m.—Opening Plenary.
- Chairmen's remarks and Host's comments.
- Introductions, approval of previous meeting minutes, review and approve meeting agenda.
- Schedule for this week.
- Action Item Review.
- 10 a.m. SPR FRAC Comment Review—Joint AIS and MET Subgroup Meetings.

**6 October—Wednesday**

- 9 a.m. SPR FRAC Comment Review—Joint AIS and MET Subgroup Meetings.

**7 October—Thursday**

- 9 a.m. SPR FRAC Comment Review—Joint AIS and MET Subgroup Meetings.
- 10:30 a.m. Plenary Session.
- Approve New Document—SPR for AIS and MET Data Link Services.
- Other Business.
- Meeting Plans and Dates.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 7, 2010.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2010–22824 Filed 9–13–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Fourteenth Meeting: EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting).

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting).

**DATES:** The meeting will be held October 12–14, 2010 starting at 9 a. m. to 5 p. m.

**ADDRESSES:** The meeting will be held at Third Floor, Conference Room 6 (CR/6) International Civil Aviation Organization (ICAO), Headquarters, 999 University Street, Montréal, Quebec H3C 5H7, Canada, Internet ICAO home page: *http://www.icao.int.*

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting) meeting. The meeting is expected to start at 9 on the first day and to finish by 17:00 each day.

A complete list of participants must be supplied in advance to support

preparation of building entry passes. Please send your intentions to attend by Monday, October 1, 2010 to *Jean-Paul.Moreaux@airbus.com* (*alt: amber.l.kemmerling@boeing.com*). Non-pre-registered attendees will not be admitted.

The agenda will include:

*Day 1:*

- Welcome/Introductions/ Administrative Remarks.
- Agenda Overview and Approval of the Summary of the 13th meeting held June 8–11, 2010, (RTCA Paper No. 137–10/SC216–029).
- Report on the PMC/ICC action on TOR:
- Publication Progress and Update.
- Subgroup and Action Item Reports.
- Plenary review of disposition of comments to ED202.

*Days 2 & 3:*

- Subgroup Meetings/Break-outs.
- Subgroup Reports on Break-outs.
- Establish Dates, Location and Agenda for Next Meeting(s).
- Any Other Business.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 8, 2010.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2010–22879 Filed 9–13–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2010–0042]**

### Pipeline Safety: Request for Special Permit

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice.

**SUMMARY:** PHMSA is providing an additional comment period of 30 days from the date of publication of this notice in relation to the **Federal Register** Notice issued on July 26, 2010, (75 FR 43612). In that notice, PHMSA requested comments concerning a special permit request from Dominion Transmission Incorporated (DTI). DTI requested relief from certain provisions of 49 CFR 192.611. PHMSA is extending the comment period in order to clarify the exact location of the special permit segment and to allow the public to review additional documents added to the docket since the original notice.

**DATES:** Submit any comments regarding this special permit request by October 14, 2010.

**ADDRESSES:** Comments should reference the docket number for this specific special permit request and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov*. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: United States Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov*.

**Note:** Comments are posted without changes or edits to *http://www.Regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:**

*General:* Dana Register by telephone at 202–366–0490; or, e-mail at *dana.register@dot.gov*.

*Technical:* Joshua Johnson by telephone at 816–329–3825; or, e-mail at *joshua.johnson@dot.gov*.

**SUPPLEMENTARY INFORMATION:** PHMSA has received a request for a special permit from Dominion Transmission Inc., seeking relief from compliance with certain pipeline safety regulations. Dominion's request includes a technical analysis. This request can be found at *http://www.Regulations.gov* under docket number PHMSA–2010–0121. We invite interested persons to participate by reviewing this special permit request at *http://www.Regulations.gov,* and by submitting written comments, data or other views. Please include any comments on potential environmental impacts that may result if this special permit is granted.

Before acting on this special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request.

PHMSA has received the following special permit request:

| Docket No. | Requester | Regulation | Nature of special permit |
|---|---|---|---|
| PHMSA–2010–0121 ..... | Dominion Transmission Incorporated (DTI). | 49 CFR 192.611 ..... | To authorize DTI to engage in an alternative approach to conduct risk control activities based on Integrity Management Program principles rather than lowering the MAOP or replacing the subject pipe segment. This application is for one segment of the DTI Line TL–465 in Loudoun County, Virginia. This segment has changed from a Class 1 location to a Class 3 location due to an expanded housing development. The pipeline is 24-inches in diameter and has a MAOP of 1,250 psig. The segment that has changed Class location is 3,478 feet in length and is located at MP 1085+81 ft. to MP 1,120+59 ft. |

**Authority:** 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC, on August 31, 2010.

**Linda Daugherty,**

*Deputy Associate Administrator for Policy and Programs.*

[FR Doc. 2010–22884 Filed 9–13–10; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1097–BTC, Bond Tax Credit

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1097–BTC, Bond Tax Credit.

**DATES:** Written comments should be received on or before November 15, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger (202) 927–9368, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *joel.p.goldberger@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Form 1097–BTC, Bond Tax Credit.

*Abstract:* This is an information return for reporting tax credit bond credits distributed to holders of tax credit bonds. The taxpayer holding a tax credit bond on an allowance date during a tax year is allowed a credit against federal income tax equivalent to the interest that the bond would otherwise pay. The bondholder must include the amount of the credit in gross income and treat it as interest income. The issuers and holders of the tax credit bond will send Form 1097–BTC to the bond holders quarterly and file the return with the IRS annually.

*Current Actions:* This form is being submitted for a new Information Collection.

*Type of Review:* This is a new collection.

*Affected Public:* Businesses or other for profit organizations, not for profit institutions, individuals or households.

*Estimated Number of Respondents:* 101,630,369.

*Estimated Total Annual Burden Hours:* 828,287,508.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2010.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2010–22790 Filed 9–13–10; 8:45 am]

**BILLING CODE 4830–01–P**


Federal Register

**Tuesday,**
**September 14, 2010**

## Part II

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 117 and 121**
**Flightcrew Member Duty and Rest Requirements; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 117 and 121**

**[Docket No. FAA–2009–1093; Notice No. 10–11]**

**RIN 2120–AJ58**

## Flightcrew Member Duty and Rest Requirements

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA is proposing to amend its existing flight, duty and rest regulations applicable to certificate holders and their flightcrew members. The proposal recognizes the growing similarities between the types of operations and the universality of factors that lead to fatigue in most individuals. Fatigue threatens aviation safety because it increases the risk of pilot error that could lead to an accident. The new requirements, if adopted, would eliminate the current distinctions between domestic, flag and supplemental operations. The proposal provides different requirements based on the time of day, whether an individual is acclimated to a new time zone, and the likelihood of being able to sleep under different circumstances.

**DATES:** Comments are due November 15, 2010.

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Dale E. Roberts, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–5749; *e-mail: dale.e.roberts@faa.gov.* For legal issues: Rebecca MacPherson, Office of the Chief Counsel, Regulations Division (AGC–200), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; *e-mail: rebecca.macpherson@faa.gov.*

**SUPPLEMENTARY INFORMATION:** Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

### Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum safety standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

### Table of Contents



### I. Executive Summary

As discussed in greater detail throughout this document, this rulemaking proposes to establish one set of flight time limitations, duty period limits, and rest requirements for pilots in part 121 operations. The rulemaking aims to ensure that pilots have an opportunity to obtain sufficient rest to perform their duties, with an objective of improving aviation safety.

Current part 121 pilot duty and rest times differ by type of operation (domestic, flag, and supplemental). A general summary of current versus proposed flight time limits, duty time limits, and rest time requirements are included in the table below.

| Scenario | Rest time | | Duty time | | Flight time | |
|---|---|---|---|---|---|---|
| | Minimum rest prior to duty—domestic | Minimum rest prior to duty—international | Maximum flight duty time—unaugmented | Maximum flight duty time—augmented | Maximum flight time—unaugmented | Maximum flight time—augmented |
| Current Part 121 .... | Daily: 8–11 depending on flight time. | Minimum of 8 hours to twice the number of hours flown. | 16 ..... | 16–20 depending on crew size. | 8 ..... | 8–16 depending on crew size. |
| NPRM ..... | 9 ..... | 9 ..... | 9–13 depending on start time and number of flight segments. | 12–18 depending on start time, crew size, and aircraft rest facility. | 8–10 depending on FDP start time. | None. |

A summary of the FAA estimates of the costs and benefits associated with the provisions in this rule can be found in the table below.

| | Nominal costs (millions) | PV costs (millions) |
|---|---|---|
| Total Costs (over 10 years) | $1,254.1 | $803.5 |
| **Benefits** | **Nominal benefits (millions)** | **PV benefits (millions)** |
| $6.0 million VSL | 659.40 | 463.80 |
| $8.4 million VSL | 837 | 589 |

The FAA began considering changing its existing flight, duty and rest regulations in June 1992, when it announced the tasking of the Aviation Rulemaking Advisory Committee (ARAC) Flightcrew Member Flight/Duty Rest Requirements working group.[1] The tasking followed the FAA's receipt of hundreds of letters about the interpretation of existing rest requirements and several petitions to amend existing regulations. While the working group could not reach consensus, it submitted a final report in June 1994 with proposals from several working group members. Following receipt of the ARAC's report, the FAA published a notice of proposed rulemaking in 1995 (1995 NPRM).[2] The FAA received over 2000 comments to the 1995 NPRM. Although some commenters, including the National Transportation Safety Board (NTSB), NASA, Air Line Pilots Association, and Allied Pilots Association, said the proposal would enhance safety, many industry associations opposed the 1995 NPRM, stating the FAA lacked safety data to justify the rulemaking, and industry compliance would impose significant costs. The FAA never finalized the 1995 rulemaking, and on November 23, 2009, the agency withdrew it because it was outdated and raised many significant issues that the agency needed to consider before proceeding with a final rule.[3]

On June 10, 2009, Federal Aviation Administration (FAA) Administrator J. Randolph Babbitt testified before the Senate Committee on Commerce, Science, and Transportation, Subcommittee on Aviation Operations, Safety, and Security on Aviation Safety regarding the FAA's role in the oversight of certificate holders. He addressed issues regarding flightcrew member[4] training and qualifications, flightcrew fatigue, and consistency of safety standards and compliance between air transportation certificate holders.[5] He also committed to assess the safety of the air transportation system and to take appropriate steps to improve it.

In June 2009, the FAA chartered the Flight and Duty Time Limitations and Rest Requirements Aviation Rulemaking Committee (ARC)[6] comprised of labor, industry, and FAA representatives to develop recommendations for an FAA rule based on current fatigue science and a thorough review of international approaches to the issue. The FAA chartered the ARC to provide a forum for the U.S. aviation community to discuss current approaches to mitigate fatigue found in international standards and make recommendations on how the United States should modify its regulations. The ARC consisted of 18 members representing airline and union associations. The members were selected based on their extensive certificate holder management, direct operational experience, or both.

Specifically, the FAA asked the ARC to consider and address the following:

- A single approach to addressing fatigue that consolidates and replaces existing regulatory requirements for parts 121 and 135.[7]
- Generally accepted principles of human physiology, performance, and alertness based on the body of fatigue science.
- Information on sources of aviation fatigue.
- Current approaches to address fatigue mitigation strategies in international standards.
- The incorporation of fatigue risk management systems (FRMS) into a rulemaking.

The ARC met over a 6-week period beginning July 7, 2009. Early on, the FAA told the ARC members it was very interested in the ARC's recommendations, but that the agency retained the authority and obligation to evaluate any proposals and independently determine how best to amend the existing regulations. The agency reiterated that participation on the ARC in no way precluded the ARC members from submitting comments critical of the NPRM when it was published. On September 9, 2009, the ARC delivered its final report to the FAA in the form of a draft NPRM.[8]

The ARC's goal was to reach as much agreement as possible on the prospective regulation. However, the members recognized early on that they would not be able to reach consensus on all issues. They were, however, generally successful in agreeing upon broad regulatory approaches and were able to reach consensus on two issues—how to address reserve[9] and the role of commuting in any proposed regulations.

The Cargo Airline Association (CAA) presented a separate proposal for FAA consideration to address the unique operations of its members.[10] According to the CAA, cargo operations are subject to different operational and competitive factors than scheduled passenger air carrier operations, including flight delays and schedule changes outside of the control of the certificate holder. The National Air Carrier Association (NACA) also submitted an alternate proposal to the ARC.[11] NACA proposed

[1] 57 FR 26685; June 15, 1992.

[2] Flightcrew Member Duty Period Limitations, Flight Time Limitations and Rest Requirements notice of proposed rulemaking (60 FR 65951; December 20, 1995).

[3] 74 FR 61067.

[4] A "flightcrew member" is defined in 14 CFR 1.1 as a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.

[5] In this document, the terms "certificate holder" and "carrier" are used interchangeably. Technically, one could be a "certificate holder" under part 121 without also being an air carrier. Accordingly, the draft regulatory text only uses the term "certificate holder".

[6] *See http://www.faa.gov/about/office%5Forg/headquarters%5Foffices/avs/offices/afs/afs200/* for the ARC Charter.

[7] While tasked to consider part 135 operations, the ARC did not consider these operations, and this proposal does not address them either.

[8] A copy of the ARC recommendations can be found in the docket for this rulemaking.

[9] *See* proposed § 117.3 (Definitions) were the term "Reserve Flightcrew Member" is defined.

[10] This proposal may be found in attachment 1 to the ARC report.

[11] This proposal may be found in attachment 2 to the ARC report.

that the regulations contained in subpart S to part 121 continue to apply to certificate holders conducting unscheduled supplemental operations. In addition, it proposed to include a requirement that such operators develop and implement FRMS.

To assist the ARC with its goal of developing proposed rules to enhance flightcrew member alertness and employ fatigue mitigation strategies, the following experts in sleep, fatigue, and human performance research presented a brief overview of the existing science and studies on sleep and fatigue to the ARC:

- Dr. Gregory Belenky, M.D., Sleep and Performance Research Center, Washington State University and Dr. Steven R. Hursh, Ph.D., President, Institutes for Behavior Resources, Professor, Johns Hopkins University School of Medicine presented information on sleep, fatigue, and human performance.
- Dr. Thomas Nesthus, Ph.D., FAA Civil Aeromedical Institute (CAMI) presented an overview of the current FAA fatigue studies.
- Dr. Peter Demitry, M.D., 4d Enterprises, addressed questions from the ARC but did not make a presentation.

The ARC members considered the information presented by the scientists as well as other available scientific information and used their substantial operational experience knowledge base to develop the ARC proposals.

Following their presentations, the scientific experts encouraged the ARC to consider the entire body of scientific studies in developing any proposed limitations and requirements, rather than any one scientific study.[12]

On August 1, 2010, the President signed the Airline Safety and Federal Aviation Administration Extension Act of 2010, Public Law 111–216 (the Act). In section 212 of the Act, Congress directed the FAA to issue regulations no later than August 1, 2011 to "specify limitations on the hours of flight and duty time allowed for pilots to address problems relating to pilot fatigue."

The Act directed the FAA to consider several factors that could impact pilot alertness including time of day, number of takeoffs and landings, crossing multiple time zones, and the effects of commuting. In addition, the agency was directed to review the available research on fatigue, sleep and rest requirements recommended by the NTSB and NASA, and applicable international standards. Finally, the agency was to explore alternate procedures to facilitate alertness in the cockpit, air carrier scheduling and attendance policies (including sick leave), and medical screening and treatment options.

The FAA has developed a proposal for addressing the risk of fatigue on the safety of flight based on an evaluation of the available literature, existing regulatory requirements in both the United States and other countries, and the broad personal, professional experience of the ARC members and FAA staff, as well as the recommendations of the NTSB and NASA. Today's proposal is consistent with the statutory mandate set forth in the Act and takes a new approach whereby the distinctions between domestic, flag, and supplemental operations are eliminated. Rather, all types of operations would take into account the effects of circadian rhythms, inadequate rest opportunities and cumulative fatigue.

The FAA believes its proposal sufficiently accommodates the vast majority of operations conducted today, while reducing the risk of pilot error from fatigue leading to accidents. In some areas, the FAA proposes to relax current requirements, while in others, it strengthens them to reflect the latest scientific information. The agency proposes to provide credit for fatigue-mitigating strategies, such as sleep facilities, that some certificate holders are currently providing with no regulatory incentive. The agency has also tentatively decided that certain operations conducted under the existing rules are exposing flightcrew members to undue risk.

Today's proposal sets forth a matrix that addresses transient fatigue (i.e., the immediate, short-term fatigue that can be addressed by a recuperative rest opportunity) by establishing a 9-hour minimum rest opportunity prior to commencing duty directly associated with the operation of aircraft (flight duty period, or FDP), placing restrictions on that type of duty, and further placing restrictions on flight time (that period of time when the aircraft is actually in motion—flight time is encompassed by FDP).

The proposal provides carriers with a level of flexibility not afforded today by permitting a limited extension of FDP and a limited reduction in the minimum rest opportunity in circumstances that are neither within the carrier's control nor reasonably foreseeable. In order to assure that carriers are adequately scheduling flightcrew member's work days, so as not to overuse the extension, carriers would be required to report on both their overall schedule integrity and specific crew-pairing schedule integrity on a bi-monthly basis. Should a carrier fail to meet the required levels of integrity, it would have to adjust its schedule to make it more reliable.

The proposal addresses cumulative fatigue by placing weekly and 28-day limits on the amount of time a flightcrew member may be assigned to any type of duty, including FDP. Further 28-day and annual limits are placed on flight time. Flightcrew members would be required to be given at least 30 consecutive hours free from duty on a weekly basis, a 25 percent increase over the current requirements.

In addition, today's proposal addresses the impact of changing time zones and flying through the night by reducing the amount of flight time and FDP available for these operations. More flight time and FDP would be available for certificate holders that add additional flightcrew members and provide adequate rest facilities to allow flightcrew members an opportunity to sleep aboard the aircraft. Credit would also be available to certificate holders that provide sufficient ground-based rest facilities.

All carriers would have to develop training programs to educate all employees responsible for developing air carrier schedules and safety of flight on the symptoms of fatigue, as well as the factors leading to fatigue and how to mitigate fatigue-based risk.

For those operations that cannot be conducted under the proposed prescriptive requirements, today's proposal also allows a carrier to develop a carrier-specific fatigue risk management system (FRMS). An FAA-approved FRMS would allow a certificate holder to customize its operations based on a scientifically-validated demonstration of fatigue-mitigating approaches and their impact on a flightcrew member's ability to safely fly an airplane beyond the confines of the proposed rule. Finally, today's proposal provides a limited exception for certain emergency operations or operations conducted under contract with the United States government that cannot otherwise be conducted under the prescriptive requirements proposed here. In order to assure there is no abuse, and that the exception is necessary, the proposal includes a reporting requirement.

## II. Background

### *A. Statement of the Problem*

Fatigue is characterized by a general lack of alertness and degradation in mental and physical performance. Fatigue manifests in the aviation context

[12] A bibliography of available studies has been placed in the docket for this rulemaking.

not only when pilots fall asleep in the cockpit while cruising, but perhaps more importantly, when they are insufficiently alert during take-off and landing. Reported fatigue-related events have included procedural errors, unstable approaches, lining up with the wrong runway, and landing without clearances.

There are three types of fatigue: transient, cumulative, and circadian. Transient fatigue is acute fatigue brought on by extreme sleep restriction or extended hours awake within 1 or 2 days. Cumulative fatigue is fatigue brought on by repeated mild sleep restriction or extended hours awake across a series of days. Circadian fatigue refers to the reduced performance during nighttime hours, particularly during an individual's window of circadian low (WOCL) (typically between 2 a.m. and 6 a.m.).

Common symptoms of fatigue include:

- Measurable reduction in speed and accuracy of performance,
- Lapses of attention and vigilance,
- Delayed reactions,
- Impaired logical reasoning and decision-making, including a reduced ability to assess risk or appreciate consequences of actions,
- Reduced situational awareness, and
- Low motivation to perform optional activities.

A variety of factors contribute to whether an individual experiences fatigue as well as the severity of that fatigue. The major factors affecting fatigue include:

- *Time of day.* Fatigue is, in part, a function of circadian rhythms. All other factors being equal, fatigue is most likely, and, when present, most severe, between the hours of 2 a.m. and 6 a.m.
- *Amount of recent sleep.* If a person has had significantly less than 8 hours of sleep in the past 24 hours, he or she is more likely to be fatigued.
- *Time awake.* A person who has been continually awake more than 17 hours since his or her last major sleep period is more likely to be fatigued.
- *Cumulative sleep debt.* For the average person, cumulative sleep debt is the difference between the amount of sleep a person has received over the past several days, and the amount of sleep they would have received if they got 8 hours of sleep a night. A person with a cumulative sleep debt of more than 8 hours since his or her last full night of sleep is more likely to be fatigued.
- *Time on task.* The longer a person has continuously been doing a job without a break, the more likely he or she is to be fatigued.
- *Individual variation.* Individuals respond to fatigue factors differently and may become fatigued at different times, and to different degrees of severity, under the same circumstances.

There is often interplay between various factors that contribute to fatigue. For example, the performance of a person working night and early morning shifts is impacted by the time of day. Additionally, because of the difficulty in getting normal sleep during other than nighttime hours, such a person is more likely to have a cumulative sleep debt or to not have obtained a full night's sleep within the past 24 hours.

Scientific research and experimentation have consistently demonstrated that adequate sleep sustains performance. For most people, 8 hours of sleep in each 24 hours sustains performance indefinitely. Sleep opportunities during the WOCL are preferable, although some research indicates that the total amount of sleep is more important than the timing of the sleep. Within limits, shortened periods of nighttime sleep may be nearly as beneficial as a consolidated sleep period when augmented by additional sleep periods, such as naps before evening departures, during flights with augmented flightcrews, and during layovers. Sleep should not be fragmented with interruptions. In addition, environmental conditions, such as temperature, noise, and turbulence, impact how beneficial sleep is and how performance is restored.

When a person has accumulated a sleep debt, recovery sleep is necessary to fully restore the person's "sleep reservoir." Recovery sleep should include at least one physiological night, that is, one sleep period during nighttime hours in the time zone in which the individual is acclimated. The average person requires in excess of 9 hours of sleep a night to recover from a sleep debt.[13]

Several aviation-specific work schedule factors[14] can affect sleep and subsequent alertness. These include early start times, extended work periods, insufficient time off between work periods, insufficient recovery time off between consecutive work periods, amount of work time within a shift or duty period, number of consecutive work periods, night work through one's window of circadian low, daytime sleep periods, and day-to-night or night-to-day transitions.

The FAA believes its current regulations do not adequately address the risk of fatigue. Presently, flightcrew members are effectively allowed to work up to 16 hours a day, with all of that time spent on tasks directly related to aircraft operations. The regulatory requirement for 9 hours of rest is regularly reduced, with flightcrew members spending rest time traveling to or from hotels and being provided with little to no time to decompress. Additionally, certificate holders regularly exceed the allowable duty periods by conducting flights under part 91 instead of part 121, where the applicable flight, duty and rest requirements are housed. As the NTSB repeatedly notes, the FAA's regulations do not account for the impact of circadian rhythms on alertness, and the entire set of regulations is overly complicated, with a different set of regulations for domestic operations, flag operations, and supplemental operations.

*B. NTSB Recommendations*

The NTSB has long been concerned about the effects of fatigue in the aviation industry. The first aviation safety recommendations, issued in 1972, involved human fatigue, and aviation safety investigations continue to identify serious concerns about the effects of fatigue, sleep, and circadian rhythm disruption. Currently, the NTSB's list of Most Wanted Transportation Safety Improvements includes safety recommendations regarding pilot fatigue. These recommendations are based on two accident investigations and an NTSB safety study on commuter airline safety.[15]

In February 2006 the NTSB issued safety recommendations after a BAE–J3201 operated under part 121 by Corporate Airline struck trees on final approach and crashed short of the runway at Kirksville Regional Airport, Kirksville, Missouri. The captain, first officer, and 11 of the 13 passengers died. The NTSB determined the probable cause of the October 19, 2004 accident was the pilots' failure to follow established procedures and properly conduct a non-precision instrument approach at night in instrument meteorological conditions. The NTSB

[13] Recovery sleep does not require additional sleep equal to the cumulative sleep debt; that is, an 8-hour sleep debt does not require 8 additional hours of sleep.

[14] Rosekind MR. *Managing work schedules: an alertness and safety perspective.* In: Kryger MH, Roth T, Dement WC, editors. *Principles and Practice of Sleep Medicine;* 2005:682.

[15] On February 2, 2010, the NTSB released a press release summarizing the results of its investigation into the Colgan Air crash of February 12, 2009, which resulted in the death of 50 people. The NTSB did not state that fatigue was causal factor to the crash; however, it did recommend that the FAA take steps to address pilot fatigue.

concluded that fatigue likely contributed to the pilots' performance and decision-making ability. This conclusion was based on the less than optimal overnight rest time available to the pilots, the early report time for duty, the number of flight legs, and the demanding conditions encountered during the long duty day.

As a result of the accident, the NTSB issued the following safety recommendations related to flight and duty time limitations: (1) Modify and simplify the flightcrew hours-of-service regulations to consider factors such as length of duty day, starting time, workload, and other factors shown by recent research, scientific evidence, and current industry experience to affect crew alertness (recommendation No. A–06–10); and (2) require all part 121 and part 135 certificate holders to incorporate fatigue-related information similar to the information being developed by the DOT Operator Fatigue Management Program into initial and recurrent pilot training programs. The recommendation notes that this training should address the detrimental effects of fatigue and include strategies for avoiding fatigue and countering its effects (recommendation No. A–06–10).

The NTSB's list of Most Wanted Transportation Safety Improvements also includes a safety recommendation on pilot fatigue and ferry flights conducted under 14 CFR part 91. Three flightcrew members died after a Douglas DC–8–63 operated by Air Transport International was destroyed by ground impact and fire during an attempted three-engine takeoff at Kansas City International Airport in Kansas City, Missouri. The NTSB noted that the flightcrew conducted the flight as a maintenance ferry flight under part 91 after a shortened rest break following a demanding round trip flight to Europe that crossed multiple time zones. The NTSB further noted that the international flight, conducted under part 121, involved multiple legs flown at night following daytime rest periods that caused the flightcrew to experience circadian rhythm disruption. In addition, the NTSB found the captain's last rest period before the accident was repeatedly interrupted by the certificate holder.

In issuing its 1995 recommendations, the NTSB stated that the flight time limits and rest requirements under part 121 that applied to the flightcrew before the ferry flight did not apply to the ferry flight operated under part 91. As a result, the regulations permitted a substantially reduced flightcrew rest period for the nonrevenue ferry flight. As a result of the investigation, the NTSB reiterated earlier recommendations to (1) finalize the review of current flight and duty time limitations to ensure the limitations consider research findings in fatigue and sleep issues and (2) prohibit certificate holders from assigning a flightcrew to flights conducted under part 91 unless the flightcrew met the flight and duty time limits under part 121 or other applicable regulations (recommendation No. A–95–113).

In addition to recommending a comprehensive approach to fatigue with flight duty limits based on fatigue research, circadian rhythms, and sleep and rest requirements, the NTSB has also stated that FRMS may hold promise as an approach to dealing with fatigue in the aviation environment. However, the NTSB noted that it considers fatigue management plans to be a complement to, not a substitute for, regulations to address fatigue.

*C. International Standards*

There are a number of standards addressing flight and duty time limitations and rest requirements that have been adopted by other jurisdictions, as well as the International Civil Aviation Organization (ICAO), and these standards were reviewed by the ARC to determine if any of their philosophy or structures could be adopted by the FAA. While the ARC found many of the requirements useful, it also determined that the U.S. requirements would need to address the U.S. aviation industry and that the existing standards could not fully achieve that objective. The FAA agrees that none of the existing standards fully address the U.S. aviation environment. Nevertheless, the existing standards do serve as the basis of many of the provisions proposed today. Accordingly, specific provisions of these standards are discussed throughout the rest of this document and a copy of each standard has been placed in the docket.

1. Amendment No. 33 to the International Standards and Recommended Practices, Annex 6 to the Convention on International Civil Aviation, Part I, International Commercial Air Transport—Aeroplanes (ICAO Standards and Recommended Practices (SARP))

The ICAO SARP for Contracting States (States) provide that a certificate holder should establish flight time and duty period limitations and rest provisions that enable the certificate holder to manage the fatigue of its flightcrew members. The ICAO SARP do not provide specific numerical values for these provisions but set forth a regulatory framework for member States to use as guidelines in establishing prescriptive limitations for fatigue management. Member States are required to base their regulations on scientific principles and knowledge with the goal of ensuring that flightcrew members perform at an adequate level of alertness for safe flight operations. The ICAO SARP do not address fatigue risk management programs currently; however, these programs are currently under development.

2. United Kingdom Civil Aviation Authority Publication 371 (CAP–371)

Air Navigation Order 2000, Part VI, as amended, requires a certificate holder to have a civil aviation authority-approved scheme for regulating the flight time of aircrews. CAP–371 provides guidance on this requirement and recognizes that the prime objective of a flight limitation scheme is to ensure flightcrew members are adequately rested at the beginning of each Flight Duty Period (FDP) and are flying sufficiently free from fatigue so they can operate efficiently and safely in normal and abnormal situations. When establishing maximum FDPs and minimum rest periods, certificate holders must consider the relationship between the frequency and patterns of scheduled FDPs and rest periods, and the effects of working long hours with minimum rest.

3. Annex III, Subpart Q to the Commission of the European Communities Regulation No. 3922/91, as Amended (EU OPS subpart Q)

EU OPS subpart Q prescribes limitations on FDPs, duty periods, block (flight) time, and rest requirements. Like the previous standards discussed, EU OPS subpart Q recognizes the importance of enabling flightcrew members to be sufficiently free from fatigue so they can operate the aircraft satisfactorily in all circumstances. In establishing flight and duty limitation and rest schemes, EU OPS subpart Q requires certificate holders to consider the relationship between the frequencies and pattern of FDPs and rest periods, and the cumulative effects of long duty hours with interspersed rest. Certificate holders must take action to revise a schedule in cases where the actual operation exceeds the maximum scheduled FDP on more than 33 percent of the flights in that schedule during a specified period.

## III. General Discussion of the Proposal

### A. Applicability

The FAA is proposing to limit this rulemaking to part 121 certificate holders and the flightcrew members [16] who work for them. While fatigue is a universal problem that applies to all types of operations and to all safety sensitive functions, the agency has decided to take incremental steps in addressing fatigue. Thus, future rulemaking initiatives may address fatigue concerns related to flight attendants, maintenance personnel, and dispatchers.

In addition, part 135 certificate holders should pay close attention to both this NPRM and any final rule. This is because part 135 operations are very similar to those conducted under part 121, particularly part 121 supplemental operations. The FAA does not intuitively see any difference in the safety implications between the two types of operations, although it acknowledges there may be less overall risk to the flying public in part 135 operations than part 121 operations. Accordingly, the part 135 community should expect to see an NPRM addressing its operations that looks very similar to, if not exactly like, the final rule the agency anticipates issuing as part of this rulemaking initiative.

Today's proposal applies to all flights conducted by part 121 certificate holders, including flights like ferry flights that are historically conducted under part 91. While these types of flights can continue to operate under the general rules of part 91, the flight, duty, and rest requirements proposed here would also apply.

In addition, the FAA has tentatively decided against adopting different requirements based on the nature of the operation. The FAA has designed the flight, duty and rest scheme proposed today to enhance flightcrew member alertness and mitigate fatigue. The agency's existing regulatory scheme provides different rules for domestic operations, flag operations, and supplemental operations. This hodgepodge of requirements developed over time to address changing business environments and advances in technology that allowed for longer periods of flight. Thus, in domestic operations, flight time is essentially calculated based on time at the controls, while in supplemental operations, the regulations contemplate restrictions based on "time aloft" since a flightcrew member may not be at the controls for the entire flight; crew augmentation is prohibited in domestic operations; and the regulations governing flag operations, where augmentation is largely assumed, allow certificate holders to liberally increase the amount of flight time based on the presence of additional flightcrew members, regardless of whether those individuals can actually fly the airplane.

Fatigue factors, however, are universal. The sleep science, while still evolving and subject to individual inclinations, is clear in a few important respects: most people need eight hours of sleep to function effectively, most people find it more difficult to sleep during the day than during the night, resulting in greater fatigue if working at night; the longer one has been awake and the longer one spends on task, the greater the likelihood of fatigue; and fatigue leads to an increased risk of making a mistake.

The FAA recognizes there are different business models and needs that are partly responsible for the differences in the current regulations. It is sympathetic to concerns raised within the ARC by cargo carriers and carriers engaged in supplemental operations that new regulations will disproportionately impact their business models. However, the FAA also notes that the historical distinction between the types of operators has become blurred. Cargo carriers conduct the vast majority of their operations at night, but passenger carriers also offer "red eyes" on a daily basis. Some carriers operate under domestic, flag or supplemental authority, depending on the nature of the specific operation. Additionally, in some instances, the FAA has authorized a carrier to conduct supplemental operations under the flag rules.

Today's proposal is designed to recognize the growing similarities between the kinds of operations and the universality of factors that lead to fatigue in most individuals. Thus, the proposal provides different requirements based on the time of day, whether an individual is acclimated to a new time zone, and the likelihood of being able to sleep under different circumstances. If today's proposal is adopted, the FAA expects that most part 121 operators will be required to make changes to their existing operations, and some will need to make more changes than others. However, the FAA also believes that the proposal is sufficiently flexible to accommodate the vast majority of operations conducted today without imposing unreasonable costs.

### B. Joint Responsibility

Fatigue mitigation is a joint responsibility of the certificate holder and the flightcrew member. Today's proposal recognizes the need to hold both certificate holders and pilots responsible for making sure flightcrew members are working a reasonable number of hours, getting sufficient sleep, and not reporting for flight duty in an unsafe condition. Many of the ways that carriers and flightcrew members will negotiate this joint responsibility will be handled in the context of labor management relations. Others will not. Today's proposal is drafted in a manner that directly imposes the regulatory obligations on both the certificate holders and the flightcrew members. It is unfair to place all the blame for fatigue on the carriers. Pilots who pick up extra hours, moonlight, report to work when sick, commute irresponsibly, or simply choose not to take advantage of the required rest periods are as culpable as carriers who push the envelop by scheduling right up to the maximum duty limits, assigning flightcrew members who have reached their flight time limits additional flight duties under part 91, and exceeding the maximum flight and duty limits by claiming reasonably foreseeable circumstances are beyond their control.

One important element of this proposal is that flightcrew members may not accept an assignment that would consist of an FDP if they are too fatigued to fly safely. Likewise a flightcrew member may not continue subsequent flight segments if he or she has become too fatigued to fly safely. Certificate holders also must assess a flightcrew member's state when he or she reports to work. If the carrier determines a flightcrew member is showing signs of fatigue, it may not allow the flightcrew member to fly. Flightcrew members should be cognizant of the appearance and behavior of fellow flightcrew members, including such signs of fatigue as slurred speech, droopy eyes, requests to repeat things, and attention to the length of time left in the duty period. If a flightcrew member (or any other employee) believes another flightcrew member may be too tired to fly, he or she would have to report his or her concern to the appropriate management person, who would then be required to determine whether the individual is sufficiently alert to fly safely.

In addition, under today's proposal, carriers would need to develop and implement an internal evaluation and audit program to monitor whether

[16] A flightcrew member is a certified pilot or flight engineer assigned to duty aboard an aircraft during a flight duty period.

flightcrew members are reporting to work fatigued. The FAA anticipates that the program would look at both the number of instances in which this happens as well as the reasons contributing to the problem. The FAA is aware of anecdotal reports of pilots flying when fatigued because they are short on sick leave, as well as instances when pilots have called in sick when the true problem was fatigue. As part of the internal audit, a carrier may need to delve into the reasons flightcrew members call in sick to make sure it is capturing accurately incidents of pilot fatigue. It could choose to create a separate fatigue category to mitigate the risk of pilots calling in sick when in fact they are fatigued.

A carrier would be required to take steps to correct any fatigue problem that it identifies. For example, if the carrier became aware that flightcrew members were commuting during their WOCL, the carrier could require that all flightcrew members spend the night prior to starting a series of FDPs within the local commuting area. The carrier could also implement other measures to address problems associated not only with commuting, but any behavior that could lead to flightcrew members reporting for FDPs unfit for duty.

Several ARC members urged that these requirements be encapsulated in a non-punitive fatigue policy. While the FAA certainly supports such policies, it also recognizes that requiring carriers to develop and implement non-punitive fatigue policies is challenging from a regulatory perspective. Carriers are entitled to investigate the causes for an employee's fatigue. If a carrier determines that the flightcrew member was responsible for becoming fatigued, it has every right to take steps to address that behavior. To the extent the fatigue may be a function of the carrier not following the regulatory requirements, the FAA certainly would investigate and possibly initiate enforcement action. In addition, self-reporting could be encapsulated in a carrier's voluntary disclosure program under the FAA's Aviation Safety Action Program (ASAP), which has certain non-punitive provisions built into the program.

*C. Fatigue Training*

The FAA believes fatigue-based training requirements are critical to informing flightcrew members how their personal behavior can unwittingly lead to fatigue, and how to mitigate the risk of fatigue in an industry that does not follow a traditional 9-to-5 work day. Fatigue training is not currently required under any regulatory regime. In the presentation to the ARC by the sleep specialists, all specialists noted that people regularly underestimate their level of fatigue, often to dangerous levels. The ARC generally agreed that fatigue training was a good idea, and several members noted that such training should extend to all "stakeholders", *e.g.,* employees of the certificate holder responsible both for scheduling and for safety of flight, rather than just flightcrew members.

The FAA agrees that flightcrew members do not bear sole responsibility for making sure they are adequately rested and that they are not the only employees of the carrier who need to be trained on the impact of fatigue on the safety of flight. The agency is proposing to require fatigue training for each person involved with scheduling aircraft and crews, all crewmembers and management personnel. The FAA is proposing to require 5 hours of initial training for all newly-hired, covered employees prior to starting work in that capacity and 2 hours of annual, recurrent training. This training would be approved through the agency's Operations Specifications (OpSpec) process.

The training curriculum would address general fatigue and fatigue countermeasures along with the following subject areas:

- FAA regulatory requirements for flight, duty and rest, and NTSB recommendations on fatigue management;
- The basics of fatigue, including sleep fundamentals and circadian rhythms;
- The causes of fatigue, including medical conditions that may lead to fatigue;
- The effect of fatigue on performance;
- Fatigue countermeasures, prevention and mitigation;
- The influence of lifestyle, including nutrition, exercise, and family life, on fatigue;
- Familiarity with sleep disorders and their possible treatments;
- The impact of commuting on fatigue;
- Flightcrew member responsibility for ensuring adequate rest and fitness for duty; and
- The effect of operating through and within multiple time zones.

In addition, the FAA recognizes that the study of fatigue and fatigue mitigation is on-going. Changes may need to be made to training programs even after approval by the FAA. Accordingly, whenever the Administrator finds that revisions are necessary for the continued adequacy of an approved fatigue education and training program, the certificate holder must, after notification, make any changes in the program that are deemed necessary by the Administrator. The FAA anticipates that such changes would be implemented through the agency's OpSpecs as provided for in 14 CFR 119.51, providing carriers with an opportunity to provide input and appeal rights.

*D. Flight Duty Period*

There are numerous studies that generally address fatigue, as well as models [17] that have been developed. The models predict fatigue-based performance degradation based on data input such as when a flight begins, how long it lasts, whether there is a rest opportunity, and the local time of day at departure and landing. Only one of these models has been validated in the aviation context,[18] although there is general validation in the railroad and motor carrier industries. The available validations are not directly applicable to aviation because of the impact of relatively rapid movement within multiple time zones.

While there is ample science indicating that performance degrades during windows of circadian low and that regular sleep is necessary to sustain performance, there is no evidence that flying multiple segments is more fatiguing than flying one or two segments per duty period. However, multiple segments require more time on task because there are more take-offs and landings, which are both the most task-intensive and the most safety-critical stages of flight. Also, pilots appear to generally agree that flying several legs during a single duty period could be more fatiguing.

One approach to addressing fatigue is to link the length of duty directly related to flight to the time of day and the number of legs that are scheduled to be flown. This approach recognizes the additional fatigue introduced by night-time flying and by flying several legs, with multiple take-offs and landings. As discussed earlier, the current regulatory system in the United States provides variability based on whether a given

[17] Bio-mathematical modeling of fatigue and performance can assist in providing objective metrics, which are conspicuously lacking in fatigue science. The rationale for modeling is that conditions that lead to fatigue are well known. A model simulates specific conditions and determines if fatigue could be present. Models can estimate degradations in performance and provide an estimate of schedule-induced fatigue risk that considers many dynamically changing and interacting fatigue factors.

[18] The SAFE model, developed by Mick Spencer of the United Kingdom, has been validated in the aviation context.

operation is flown under domestic, flag or supplemental rules; but within each category of operation there is little to no variability in permissible flight time based on the particular operation.

Other jurisdictions have largely eliminated the concept of a uniform flight time in favor of a variable FDP that encompasses flight time but also includes other duties directly related to flight. An FDP is duty consisting of training required by the certificate holder's approved flight training curriculum and qualification segment to be conducted in a simulator, flight training device and aircraft training,[19] as well as pre-flight deadheads [20] without an intervening rest, and all duties from the time the flightcrew member is required to report for duty to fly until the last movement of the aircraft. An FDP begins when a crewmember is required to report for duty that includes a flight, series of flights, or positioning flights (including part 91 ferry flights) and ends when the aircraft is parked after the last flight and there is no plan for further aircraft movement by the same crewmember.

Under the UK's CAP–371 an FDP is limited to no more than 13 hours under a minimum crew pairing, but may be increased through augmentation or split duty rest, and is reduced based on flying in the WOCL or flying multiple legs. The minimum FDP is 9 hours, unless flying multiple night-time operations, when FDP is reduced to 8 hours. A pilot in command may extend the FDP up to 3 hours due to unforeseen circumstances. Any duty immediately preceding flight check-in is also considered FDP, as is simulator training conducted during the same duty period if prior to flying, regardless of whether there is a break.

Under EU–OPS subpart Q, the maximum FDP is 13 hours, reduced at 30-minute increments per segment after the second segment down to a 2-hour reduction. One-hour extensions are permitted, except when an FDP has more than six segments, when no extension is permitted. There is a more complicated formula that applies when encroaching on the WOCL. There are no more than two extensions during any 7-day period. Schedule robustness is addressed by requiring that actual operations not exceed FDP more than 33 percent of the time (i.e., actual flights are within the FDP limits at least 67 percent of a scheduling season). A 2-hour extension is permitted at the discretion of the entire crew for unforeseen circumstances.

The pending EASA proposal on flight duty and rest would adopt the same FDP concept as CAP–371 and EU–OPS subpart Q. Like those standards, the maximum FDP is 13 hours unless a mitigation strategy such as augmentation is adopted, and the FDP is reduced based on time of day and number of legs flown. Unlike the CAP–371, and similar to EU–OPS subpart Q, the EASA proposal contemplates that schedules that do not regularly meet the maximum-allowable FDP will be changed. The CAP–371 merely requires a pilot in command to report when the FDP is exceeded.

The ARC members generally agreed with the approach adopted in CAP–371 and by EASA, although they could not agree on how conservative maximum FDPs should be. Tables A(1) and A(2) depict the two ranges of FDP discussed by the ARC, with Table A(1) generally representing the labor position, and A(2) generally representing the carriers' position. Both tables reduce the amount of FDP during the nighttime hours to address flying during one's WOCL, and both reduce the amount of FDP once a flightcrew member has flown more than four legs. Flightcrew members would enter the table based on the time at their home base (i.e., the city where they regularly fly from) unless they have acclimated to a different time zone, at which point they would enter the table based on local time. In addition, the FDP would be reduced by 30 minutes for unacclimated flightcrew members. Extensions no greater than 2 hours (possibly as many as 3 hours internationally or for augmented flights) beyond a scheduled FDP would be allowed for circumstances beyond a carrier's control. The decision to extend would rest on both the carrier and the pilot in command, although specific coordination might not be required in every instance. In addition, there would be limits on the number of times a crew pairing could be extended in any 168-hour period, with discussion of whether that limit should be once or twice, but general agreement that it should not be allowed on consecutive days. A flightcrew member could not continue an FDP beyond the extension except under emergency circumstances.

TABLE A(1)—FLIGHT DUTY PERIOD: UN-AUGMENTED OPERATIONS

| Time of start (Home base or acclimated) | Maximum flight duty period (hours) for lineholders based on number of flight segments | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7+ |
| 0000–0359 | 9 | 9 | 9 | 9 | 9 | 9 | 9 |
| 0400–0459 | 10 | 10 | 9 | 9 | 9 | 9 | 9 |
| 0500–0559 | 11 | 11 | 11 | 11 | 10 | 9.5 | 9 |
| 0600–0659 | 12 | 12 | 12 | 12 | 11.5 | 11 | 10.5 |
| 0700–1259 | 13 | 13 | 13 | 13 | 12.5 | 12 | 11 |
| 1300–1659 | 12 | 12 | 12 | 12 | 11.5 | 11 | 10.5 |
| 1700–2159 | 11 | 11 | 10 | 10 | 9.5 | 9 | 9 |
| 2200–2259 | 10.5 | 10.5 | 9.5 | 9.5 | 9 | 9 | 9 |
| 2300–2359 | 9.5 | 9.5 | 9 | 9 | 9 | 9 | 9 |

[19] Training conducted in accordance with the certificate holder's approved ground training program would be considered duty outside of an FDP.

[20] *Deadhead transportation* means transportation of a crewmember as a passenger, by air or surface transportation, as required by a certificate holder, excluding transportation to or from a suitable accommodation.

TABLE A(2)—FLIGHT DUTY PERIOD: UN-AUGMENTED OPERATIONS

| Time of start (Home base) | Maximum flight duty period (hours) for lineholders based on number of flight segments | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7+ |
| 0000–0159 | 9 | 9 | 9 | 9 | 9 | 9 | 9 |
| 0200–0459 | 10 | 10 | 10 | 10 | 9 | 9 | 9 |
| 0500–0659 | 12 | 12 | 12 | 12 | 11.5 | 11 | 10.5 |
| 0700–1259 | 13 | 13 | 13 | 13 | 12.5 | 12 | 11.5 |
| 1300–1659 | 12 | 12 | 12 | 12 | 11.5 | 11 | 10.5 |
| 1700–2159 | 11 | 11 | 11 | 11 | 9 | 9 | 9 |
| 2200–2259 | 10.5 | 10.5 | 10.5 | 10.5 | 9 | 9 | 9 |
| 2300–2359 | 9.5 | 9.5 | 9.5 | 9.5 | 9 | 9 | 9 |

In order to assure that the extensions are not abused and that carriers are creating schedules contemplating circumstances that may be beyond their control, but that are reasonably foreseeable (*e.g.,* seasonal weather trends, planned runway construction, chronically-delayed airports or markets), a carrier would provide the FAA with scheduled FDPs for all its crew pairings and the actual FDPs, including any extensions, on a regular basis. Some argued this cycle should be as little as once a month, while others argued a quarterly reporting cycle was sufficient. Should the carriers' actual FDPs fail to meet the scheduled FDP too many times during the reporting cycle, they would be required to change the scheduled FDPs to more realistic levels. The ARC agreed that 95 percent of a carrier's schedules would need to fall within the maximum FDP depicted in Table A(1) or A(2). In order to identify specific crew pairings that were problematic, each crew pairing would need to fall within the limits in the tables for a lesser percentage of the time, somewhere between 70 percent and 85 percent.

The FAA has decided to propose the more conservative FDPs depicted in Table A(1), with a 2-hour extension for unforeseeable circumstances beyond the carrier's control permitted once in a 168-hour period.[21] Since the entire flightcrew is impacted by the extension, only one flightcrew member needs to have utilized the extension in the previous 168 hours for it to no longer be available.

If the extension is less than 30 minutes, the FAA anticipates permitting multiple extensions during the 168-hour period. The FAA has tentatively determined that short incursions into the permissible extension are unlikely to be fatiguing given the other requirements of today's proposal and that limiting a flightcrew member to a single weekly extension that could be as small as five or ten minutes is unreasonable. However, the extensions are intended to address unforeseeable circumstances beyond the carrier's control. Such circumstances should be of sufficiently short duration that the carrier could not reasonably make schedule adjustments. Thus, while the FAA contemplates that adverse weather could fit within the criteria because it is beyond the control of the certificate holder, it would not always be considered unforeseeable. Carriers should anticipate thunderstorms in many parts of the United States during the summer months. Likewise, heavy snow in the northern parts of the country should be anticipated during the winter, and the jet stream follows basic seasonal patterns. By the same token, carriers are not responsible for air traffic delays; however, if they are operating out of chronically delayed airports, air traffic delays are clearly foreseeable. To the extent even small extensions are regularly occurring, the schedule reliability requirements discussed by the ARC should require schedule adjustments, even when encroachments beyond the times in the FDP table are very small.

The FAA recognizes that adopting the numbers in Table A(1) is a conservative approach. The FAA has decided to propose the more conservative numbers because it has little experience with this type of regulatory regime. However, the numbers contemplated under both tables are very similar, and the FAA is open to arguments that a more expansive FDP is merited. The agency also recognizes that upon completion of an FDP, a flightcrew member could be assigned other duties as long as he or she is provided with a required rest opportunity prior to commencing his or her next FDP. The underlying premise of today's proposal is to ensure flightcrew members are adequately rested during the time they are responsible for the operation of aircraft. To the extent other duties are not directly related to the safe operation of flight, the FAA believes there is no need to reduce the current implied daily duty limit of 16 hours in un-augmented operations, as long as those duties do not introduce the potential for fatigue during flight.

The reduction in maximum FDP during nighttime hours is broadly supported by existing sleep science. Although not addressed by sleep studies, the FAA has also tentatively decided to reduce the amount of available FDP depending on the number of legs flown (flight segments) because of a general agreement among the ARC members and FAA staff previously employed as pilots by commercial air carriers that multiple take-offs and landings are more fatiguing. Much of the available science is based on laboratory studies, with exceptionally limited validation in the aviation context; accordingly, the FAA has tentatively decided to rely on the experience of these individuals rather than assuming no adverse impact on safety. The FAA is not proposing to make any adjustments for the first four flight segments based on this same experience. The linear reduction contemplated in the EASA regulations (which is used for multiple purposes) appears to have more to do with regulatory simplicity than with any actual experience or science.

As recommended by the ARC, a flightcrew member would enter the FDP table based on home base time, unless acclimated to a different time zone. Thus, if a flightcrew member ordinarily flies out of Chicago, the flightcrew member would enter an FDP as though he or she were in Chicago, regardless of where he or she is physically located.[22]

[21] A 3-hour extension would be allowed for augmented operations.

[22] Some carriers have moved to virtual home bases, or have no home base. This is most common among supplemental operators. In those instances, the proposal contemplates that the carrier would name a home base somewhere within the continental United States, and that home base would be considered the flightcrew member's home base.

A 10 a.m. crew pairing out of Heathrow would be treated as if it commenced at 4 a.m., because of the 6-hour time difference between Chicago and London. If the operation requires the flightcrew member to cross more than four time zones, he or she would be considered unacclimated, and there would be a 30-minute reduction in the maximum FDP.

The FAA has also decided to propose the reporting requirements discussed by the ARC to assure realistic scheduling. The agency has tentatively decided that reports be filed with the FAA every two months. The ARC discussed a range of one to three months. The FAA believes a monthly reporting requirement could be excessively burdensome to both the certificate holders and the FAA. By the same token, if the reporting interval is too long, carriers may avoid addressing common delay scenarios, simply waiting them out.

Under today's proposal, carriers must first demonstrate that 100 percent of the scheduled crew pairings fall within the limits in the FDP table. Actual system-wide FDPs should not exceed the maximum levels in the FDP table more than five percent of the time. Each crew pairing would need to fall within the FDP table 80 percent of the time. The agency believes a 20 percent variation for a specific crew pairing provides carriers with sufficient flexibility to address multiple yet small excursions beyond the FDP table, while still forcing the carriers to recognize when a particular crew pairing is problematic. Because no flightcrew member may exceed the limits in the FDP table beyond 30 minutes more than once in any 168-hour period, the FAA does not believe a 20 percent variation will result in any immediate adverse safety situation.

Should any of the three proposed reporting requirements be exceeded, a carrier would be required to readjust the problematic crew pairings to more realistic schedules. These adjustments, which could be seasonal in nature, would be on-going and would apply to subsequent years. To the extent a carrier could immediately implement measures to improve schedule fidelity, it should do so. However, the ability of carriers to immediately address the scheduling issue is difficult to evaluate without understanding the impact of published schedules on resolving the problem. The FAA has notionally proposed that changes be made within 60 days, but it is interested in better understanding the impact of such a requirement on carriers' schedules.

Below, and throughout this document, we invite commenters to address specific questions, along with any other matters they consider relevant. We are particularly interested in receiving recommendations that would provide the same or better protection against the problems of fatigue at lower cost. We may incorporate any such recommendation in a Final Rule in this proceeding.

With that in mind, the FAA seeks comment on the following:

(1) Please comment on adopting maximum FDPs. Should the maximum FDP vary based on time of day? Should it vary based on the number of scheduled flight segments? Should the proposed limits be modified up or down, and to what degree? Please provide supporting data.

(2) Please comment on permitting flightcrew members and carriers to operate beyond a scheduled FDP. Is the proposed 2-hour extension appropriate? Is the restriction on a single occurrence beyond 30 minutes in a 168-hour period appropriate? Should a flightcrew member be restricted to a single occurrence regardless of the length of the extension? Please provide supporting data.

(3) Please comment on the proposed schedule reliability reporting requirements. Should carriers be required to report on crew pairings that exceed the scheduled FDP, but not the maximum FDP listed in the FDP table?

(4) Should carriers be required to report on more parameters, such as cumulative duty hours or daily flight time? If so, why?

(5) What should be the interval between reporting requirements?

(6) How long after discovering a problematic crew pairing should the carrier be afforded to correct the scheduling problem?

*E. Acclimating to a New Time Zone*

Unlike other forms of transportation, where an individual moves gradually through multiple time zones over the course of the day, the nature of aviation allows an individual to traverse several time zones over a relatively short period of time. This phenomenon exposes flightcrew members to a greater sense of disorientation or jet lag than employees in other forms of transportation. For trips with short turn around times, a flightcrew member likely would not acclimate, and would simply enter the FDP table based on his or her home base time. However, flightcrew members remaining in a new theater for longer periods of time may need to acclimate to the new theater.

During the question and answer session with ARC members, the sleep specialists explained how an individual acclimates to time zones when flying long range operations. They stated that having sleep opportunities during a physiological night is the most important fatigue mitigation strategy for global travel. They also noted that an individual attempting to acclimate to a new time zone will adjust his or her clock approximately 1 hour per day for each hour of time zone difference. The ARC members noted that based on their collective personal experience, one could acclimate much more quickly if one managed his or her sleep opportunity appropriately. The sleep specialists also noted that even if an individual consciously decided not to acclimate to a new time zone, given enough time, the individual would begin to acclimate anyway because of the differences in exposure to daylight.

The ARC discussed various approaches to determine whether a flightcrew member is acclimated before accepting an assignment for an FDP. The ARC originally defined the un-acclimated condition as flying across five or more time zones.[23] Moving beyond these constraints would qualify as moving into a new theater of operations. The ARC members agreed that the continental United States should constitute a single theater so that a flightcrew member would always be acclimated when flying domestically. The ARC concluded that to reset from an un-acclimated condition to an acclimated condition a flightcrew member would require either three consecutive physiological night's rest,[24] during which period the flightcrew member could fly, or a 30 to 36 hour layover rest period. Some ARC members noted that a flightcrew member could be on duty during the period encompassing 3 local nights, but not during local nighttime hours.

As noted previously, sleep science has not been validated in the aviation context. The members of the ARC universally rejected the premise that it would take between six and 9 days to acclimate to a European time zone. The FAA is inclined to agree with the ARC members' experience, especially given the limited scientific information specific to aviation. The FAA also recognizes that assuring that length of time to acclimate to a new theater is impractical in the aviation context.

[23] In some areas of the world, time zones change in one half hour increments rather than one hour increments. Accordingly, one would have to experience a time change of at least four hours as well as five time zones.

[24] *Physiological night's rest* means the rest occurs between the hours of 0100 and 0700 local time. This definition assures an opportunity to sleep during the WOCL.

The FAA proposes to permit a carrier to adjust where the flightcrew member enters the FDP as an acclimated crew member if the individual has been in a new theater of operations for 72 hours or has been given at least 36 consecutive hours free from duty. Remaining in the same theater for 72 hours allows for three physiological night's rest. A 36 consecutive hour break in duty does not allow for the same amount of rest, but allows the individual to structure the available rest opportunity in a manner that best suits his or her personal sleep patterns. The FAA is not proposing to stipulate that an unacclimated flightcrew member will only become acclimated when continuing to fly within a new theater as long as that flightcrew member does not fly at night. This strikes the agency as an unnecessary constraint.

While the continental United States is considered a single theater, operations from one part of the United States could trigger the need to acclimate sooner than operations from another part of the United States. Thus, a flight from New York to Hawaii could trigger a need to acclimate in Hawaii, while a flight from Los Angeles to Hawaii would not.

The ARC discussed the amount of rest needed for flightcrew members returning to their home base after becoming acclimated in another theater. The ARC members noted that the flightcrew member is not truly acclimated to the new theater but also is no longer acclimated to his or her home base. Ultimately, the ARC members agreed that a flightcrew member must always find at least 30 to 36 continuous hours free of duty in any 168 consecutive hours and that once a flightcrew member is given this rest, the flightcrew member is considered acclimated to local time. Based on this discussion, the FAA has decided against imposing any unique restrictions on a flightcrew member simply because he or she has returned to his or her home base. Acclimation to a home base is treated the same as any other acclimation to a new theater.

However, the FAA is proposing to require a greater rest opportunity when a flightcrew member has been away from his or her home base for more than 168 hours. In this instance, the FAA proposes to require a rest period that includes 3 physiological nights, rather than 36 hours free from duty or permitting the flightcrew member to fly during that approximately 72-hour period. This decision is based on the ARC members' consideration of the amount of rest being dependent on how long the flightcrew member was away from home base. The ARC reviewed the current regulation, which requires a flightcrew member who exceeds 12 flight hours to receive twice the amount of rest upon return to home base.

The ARC members also discussed the impact of multiple consecutive round-trip flights where flightcrew members would fly consecutive flights to an international destination, lay over for a day, and then return to the home base (e.g., Houston, Texas, to Paris, France, and return to Houston).[25] These types of pairings are common, with a flightcrew member potentially flying three roundtrips in a week. The concern was that these types of flights will typically have layovers from 20 to 28 hours. The length of the layovers is primarily based on scheduling concerns.

The length of the layover does not initially appear problematic, particularly in light of the current regulations which only require one 24-hour break in duty in a 7-day period. However, when the flights are particularly long, a layover of approximately 24 hours becomes a problem because the flightcrew member is constantly flipping his or her internal clock. When one runs the scenario through the SAFTE/FAST model with a three-person augmented crew, the flightcrew member reaches high fatigue limits during the second round-trip flight and is dangerously fatigued during the third round-trip flight. However, when the flights are not particularly long flights, flightcrew members appear to have no problem flying three roundtrip flights, even with the 24-hour layovers.

The ARC developed a draft regulatory proposal to address operations so long that they almost trigger a fourth flightcrew member. Under that proposal, if the flight assignment is for a three pilot flight crew and the layover is between 20 and 28 consecutive hours and the two FDPs, separated by the layover rest, are greater than 22 to 24 hours, then the flight crew requires two physiological night's rest or one physiological night's rest with an 8-hour restriction on the next FDP.

Upon reflection, the FAA has decided that the ARC proposal is unduly complicated and only addresses a small number of potential operations. The agency has decided against proposing it. However, as part of the required training program proposed today, carriers should be educated on the risks associated with flipping a flightcrew member's internal clock, particularly when conducting operations that are on the cusp of requiring an additional flightcrew member.

The FAA requests comments on the following:

(7) Is a 3-day adjustment to a new theater of operations sufficient for an individual to acclimate to the new theater?

(8) Is a 36-hour break from duty sufficient for an individual to acclimate to a new theater?

(9) Should flightcrew members be given a longer rest period when returning to home base than would otherwise be provided based on moving to a new theater?

(10) Should the FAA have different requirements for flightcrew members who have been away from their home base for more than 168 hours? If so, why?

(11) Should the FAA require additional rest opportunities for multiple pairings between two time zones that have approximately 24-hour layovers at each destination? What if the scheduled FDPs are well within the maxima in the applicable FDP table or augmentation table?

*F. Daily Flight Time Restrictions*

Initial ARC discussion of FDPs assumed that, as is the case in CAP–371 and the EASA regulations, there would be no daily limit on flight time. Instead flight time would effectively be limited to approximately 2 hours less than the FDP because FDP assumes a flightcrew member will report for duty an hour and a half before flying and will spend approximately 30 minutes after completing all flying for the day completing paperwork. In that context, the maximum amount of time flying during the middle of the day could increase from the current 8 hours to as much as 11 hours, almost a 50 percent increase. The ARC noted that the FAA may decide that daily limits on flight time are still needed and proposed a variable flight time based on the hour of the day. Tables B(1) and B(2) represent potentially acceptable flight time limitations within FDPs. Table B(1) generally represents the position of the carriers, while Table B(2) generally represents the position of labor.[26]

[25] These pairings do not always involve a return to a home base, but could be a return to another city within the time zone for or adjacent to the flightcrew member's home base. They can also occur when the flightcrew member has adjusted to a new theater and an airport within that theater effectively becomes the home base.

[26] Some carriers argued that no limit should be placed on flight time and some labor representatives argued that the maximum limit should be variable, but should never exceed eight hours.

TABLE B(1)—MAXIMUM FLIGHT TIME LIMITS

| Time of start (home base) | Maximum flight time (hours) |
|---|---|
| 0000–0159 | 7 |
| 0200–0459 | 8 |
| 0500–0659 | 10 |
| 0700–1259 | 11 |
| 1300–1659 | 10 |
| 1700–2159 | 9 |
| 2200–2259 | 8.5 |
| 2300–2359 | 7.5 |

TABLE B(2)—MAXIMUM FLIGHT TIME LIMITS

| Time of start (home base) | Maximum flight time (hours) |
|---|---|
| 0000–0459 | 7 |
| 0500–0659 | 8 |
| 0700–1259 | 9 |
| 1300–1959 | 8 |
| 2000–2359 | 7 |

In addition, the CAA presented an alternate regulatory approach, whereby flight time limits for all-cargo operations would be more expansive and would differ dependent on whether the particular operation was a domestic operation or an international operation. The numbers proposed by the CAA are presented in Tables B(3) and B(4).

TABLE B(3)—MAXIMUM FLIGHT TIME LIMITS, DOMESTIC ALL-CARGO

| Time of start (home base) | Maximum flight time (hours) 1–4 sectors | Maximum flight time (hours) 5+ sectors |
|---|---|---|
| 0000–0459 | 8 | 7 |
| 0500–1459 | 11 | 9 |
| 1500–1659 | 10 | 8 |
| 1700–2359 | 8 | 7 |

TABLE B(4)—MAXIMUM FLIGHT TIME LIMITS, INTERNATIONAL ALL-CARGO

| | Maximum flight time (2 pilot) | Maximum flight time (2 pilot, 1 engineer) |
|---|---|---|
| Flight time includes WOCL | 8 | 12 |
| Flight time does not include WOCL | 10 | 12 |

The FAA has decided to propose a variation of the more conservative maximum daily flight time limits for unaugmented operations in Table B(2). The agency proposes to extend the number of hours reflected in Table B(2) by one hour. This approach melds the different approaches in Tables B(1) and B(2), allowing for slightly higher flight time limits during early morning and daytime hours than are currently allowed, but not permitting extensions that, at some hours, come close to a 50 percent increase over the current limits. Because current unaugmented operations are limited to 8 hours, the FAA's ability to evaluate the impact of significantly longer flight time limits on aviation safety is limited. Accordingly, the FAA believes it is appropriate to propose overall limits that are more conservative than those depicted in Tables B(1), B(3) and B(4).

The FAA recognizes that it has allowed up to 12 hours of flight time in circumstances that it has considered augmented operations, even though the third flightcrew member is not able to fly the plane. This has occurred in supplemental and flag operations when the flightcrew consists of two pilots and a flight engineer, and was more common when the fleet of aircraft requiring flight engineers was larger. Accordingly, this data set is much smaller than the set based on the 8-hour domestic limitation. Nevertheless, based on the safety history of these operations, it may be possible to demonstrate that longer flight time limits will not adversely affect safety, particularly during daytime hours when the flightcrew had an opportunity to sleep through their WOCL the previous night.

The FAA also recognizes that daily flight time limits will have the greatest impact on crew pairings that consist of a single leg. This is because when flying multiple segments, more of the FDP will be spent on layovers. Thus, for a single segment pairing, almost all of the FDP will consist of flight time, while for a pairing with three or four legs, much of the FDP will not consist of flight time. As a carrier adds legs, the FDP becomes more of a constraint than the flight time limit.

The FAA has decided against proposing special rules for all-cargo operations because there are no physiological differences between pilots who fly cargo planes and pilots who fly passenger planes. As noted before, the FAA believes the distinctions between domestic and international operations are largely irrelevant. To the extent they are truly distinct (generally due to the length of the trip), those differences are better addressed through augmentation rather than simply by extending the allowable flight time. Augmentation is discussed in greater detail in the next section.

The FAA seeks comment on the following:

(12) If the FAA adopts variable FDP limits, is there a continued need for daily flight time limits?

(13) If the FAA retains daily flight time limits, should they be higher or lower than proposed? Please provide data supporting the answer.

(14) Should modifications be made to the proposed flight time limits to recognize the relationship between realistic flight time limits and the number of flight segments in an FDP?

*G. Mitigation Strategies*

1. Augmentation

Even with the variable FDP and flight time, there will continue to be a need to augment crews for longer flights. Ideally, augmentation should follow the same approach as FDP, *i.e.,* circadian rhythms, acclimation to time changes, and multiple flight segments should be considered in determining how much augmentation is required. Further consideration should be given to the quality of the available rest facility.

Essentially, the current regulations require augmentation beyond 8 hours of scheduled flight time. Under the FAA's flag and supplemental rules, augmentation permits the following increases in flight time above the 8-hour limitation contemplated under the agency's domestic rules: [27]

- If there are three flightcrew members (one of whom may be an engineer), maximum flight time is extended to 12 hours. There is no requirement for a rest facility.
- If there are four pilots (or three pilots and two flight engineers), maximum flight time is extended to 16

[27] Because the domestic rules do not allow for any extension of flight time, augmentation is not used domestically.

hours. There must be an FAA-approved rest facility on board the aircraft (generally a bunk).

• There are no hard constraints on flight time that exceeds 16 hours. Instead, the FAA has addressed the carriers' fatigue mitigation practices on a case-by-case basis.

The FAA believes that its current approach to augmentation fails to consider several pertinent factors. It fails to adequately consider the qualifications of all of the flightcrew members, giving credit for individuals who are not qualified to operate the controls; it fails to consider the varying quality of sleep facilities below a 12-hour flight time limit; it fails to recognize that, provided an opportunity for sleep is provided, some domestic operations could benefit from augmentation; and, as is the case generally with the agency's flight and duty regulations, it fails to consider the impact of circadian rhythms.

The FAA proposes to amend the existing regulations by varying the levels of augmentation credit depending on the quality of the rest facility, except that no credit would be given for rest in coach seats. The level of extensions would also vary based on when the flight takes place to account for circadian rhythms and whether the flight crew is acclimated. Domestic augmentation would be permitted if a sufficient rest opportunity is provided. Finally, all flightcrew members would have to be type-rated as a second-in-command (SIC) or pilot-in-command (PIC) and throughout the flight at least one crewmember on the flightdeck would have to be type-rated as a PIC. The FAA would also continue to permit extensions in flight time based on the number of flightcrew members, with greater credit given for four-man flightcrews than for three-man crews.

The FAA believes this approach will provide carriers with a significant amount of flexibility. Should the carrier decide not to invest in superior rest facilities, it could opt to provide a lesser quality rest facility and add additional, qualified flightcrew members to extend the augmentation period.

The FAA's proposal is largely based on the general recommendation of the ARC. In reaching its conclusions, the ARC members reviewed the scientific material regarding augmentation that was presented during its meetings. Following are key points made by the sleep specialists during their presentations.

• In-flight naps with augmented flightcrews are dramatically helpful in mitigating sleep debt.

• When extending the FDP with an augmented flightcrew, augmented flightcrew members are presented with an opportunity for in-flight sleep, however the flightcrew members must take advantage of this sleep opportunity because augmentation is of no value if the entire flightcrew is awake.

• The value of augmented flightcrew operations depends on the available sleep facility, with a quiet, flat bunk being the most desirable.

• In-flight sleep has restorative value, and the flatter one is able to lie, the more beneficial the sleep.[28]

• To divide in-flight duty and rest among the flightcrew appropriately, route guides for positioning of sleep should be developed for augmented flightcrews (i.e., not all crewmembers need to be provided for equal sleep opportunities; rather pilots responsible for more complicated duties such as take-offs and landings may need more of a sleep opportunity, and may need that opportunity at a more ideal time in the flight).

In establishing the maximum scheduled FDP limitations for an augmented flightcrew, the ARC discussed the relative merits and safety of operations conducted with augmented flightcrews receiving in-flight rest, as compared to conventionally scheduled operations. The ARC noted that the type of rest facility needs to be addressed in the proposed rule and in advisory material.

The most comprehensive evaluation of available sleep facilities was conducted by the Dutch government in 2007 to provide science-based advice on the maximum permissible extension of the FDP related to the quality of the available onboard rest facility and the augmentation of the flightcrew with one or two pilots. Extension of Flying Duty Period by In-flight Relief (July 29, 2007) (TNO Report). The TNO report benchmarked existing research in arriving at its recommended values. The TNO report evaluated the quality of existing sleep facilities to determine how much sleep a flightcrew member could reasonably expect to get. The evaluation ranged from coach seats (a class IV rest facility) to bunks that were isolated from the rest of the crew and passengers (a class I rest facility). Based on the quality of the facility, the TNO Report assigned different values that would allow for an extension of the FDP. Based on its research, TNO decided against giving any credit for class IV rest facilities.

The ARC noted that both the TNO Report and CAP–371, to varying degrees, assign value to in-flight rest opportunities that depend on the quality of the rest facility available on the aircraft. The ARC determined that there are approximately 20 different combinations of facilities among various certificate holders. The ARC members developed a rating system dependent on the ability to lie in a horizontal, flat position; control the amount of light and noise; and rest in a temperature-controlled environment; as well as the flightcrew member's time off task. Depending on the amount of points assigned to these areas, the amount of credit for receiving rest in a type of seat could be calculated. The ARC members suggested a Type I, II, and III scheme, resulting in the following classes of sleep facilities:

• *Class 1 rest facility:* A bunk or other surface that allows for a flat sleeping position, is separated from both the flight deck and passenger cabin to provide isolation from noise and disturbance and provides controls for light and temperature.

• *Class 2 rest facility:* A seat in an aircraft cabin that allows for a flat or near flat sleeping position (around 80 degrees from the seat's vertical centerline),[29] is separated from passengers by a minimum of a curtain to provide darkness and some sound mitigation, and is reasonably free from disturbance by passengers and/or flightcrew members.

• *Class 3 rest facility:* A seat in an aircraft cabin or flight deck that reclines at least 40 degrees, provides leg and foot support, and is not located in the coach or economy section of a passenger aircraft.

Accordingly, the ARC revised the sleep credit for the class rest facility to more closely align the percentages with the TNO Report recommendations as follows:

• Class 1: 75 percent.
• Class 2: 56 percent.
• Class 3: 25 percent.
• No credit for coach seats.[30]

The ARC determined that augmentation should be required when either the maximum scheduled FDP or flight time hour limit depicted in Tables A and B of this document is insufficient for the planned operation. The ARC considered that longer flights crossing multiple time zones or overnight flights could be better indicators of the need to augment than flight times. For example,

[28] Sitting up increases blood flow to the brain and causes emission of norephrenephrine, which is stimulative instead of relaxing.

[29] This constraint would likely keep the rest facility out of the coach or economy section of the aircraft.

[30] CAA would give partial credit for coach seats.

an 8-hour, 45-minute flight during the day could be safely operated by an un-augmented flightcrew, but a 7-hour, 30-minute overnight flight should perhaps be augmented. One ARC member proposed that any planned pairing with greater than 6.5 block hours where the FDP infringes on the normal sleep cycle require augmentation.

The ARC developed Table C, which combines the limits from the first (single flight segment) column of the proposed FDP table (Table A) with principles from the TNO Report.

TABLE C—FLIGHT DUTY PERIOD: ACCLIMATED AUGMENTED FLIGHTCREW

| Time of start (home base) | Maximum flight duty period (hours and minutes) based on rest facility and number of pilots | | | | | |
|---|---|---|---|---|---|---|
| | Class 1 rest facility | | Class 2 rest facility | | Class 3 rest facility | |
| | 3 pilots | 4 pilots | 3 pilots | 4 pilots | 3 pilots | 4 pilots |
| 0000–0559 | 13:50 | 16:05 | 12:55 | 14:20 | 11:45 | 12:15 |
| 0600–0659 | 15:10 | 17:40 | 14:10 | 15:40 | 12:55 | 13:25 |
| 0700–1259 | 16:30 | 19:20 | 15:25 | 17:05 | 14 | 14:30 |
| 1300–1659 | 15:10 | 17:40 | 14:10 | 15:40 | 12:50 | 13:20 |
| 1700–2359 | 13:50 | 16:05 | 12:55 | 14:20 | 11:45 | 12:15 |

The ARC discussed placing an absolute cap of 16 or 18 hours (for a three- or four-man flightcrew, respectively) on the FDP, even though the TNO Report scheme results in a higher FDP. The ARC determined that higher FDPs could be achieved only by use of an FRMS. Under such a constraint, only augmented operations commencing between the hours of 7 a.m. and 1 p.m. would be constrained beyond Table C, and then only when the highest quality rest facility is provided. The ARC stated that its prescriptive approach could apply to most operations, but certificate holders engaged in ultra-long range operations could use an FRMS to develop an alternate means of fatigue mitigation tailored to their specific operations. The ARC members noted that some types of operations, such as air cargo operations, which operate under different demands and circumstances, might approach augmentation and fatigue differently than other types of operations.

The maximum scheduled FDP limitations for augmented flightcrew member operations with an unacclimated flightcrew are set forth in Table D.

TABLE D—FLIGHT DUTY PERIOD: UNACCLIMATED AUGMENTED FLIGHTCREW

| Time of start (home base) | Maximum flight duty period (hours and minutes) based on rest facility and number of pilots | | | | | |
|---|---|---|---|---|---|---|
| | Class 1 rest facility | | Class 2 rest facility | | Class 3 rest facility | |
| | 3 pilot | 4 pilot | 3 pilot | 4 pilot | 3 pilot | 4 pilot |
| 0000–0559 | 13:15 | 15:20 | 12:20 | 13:35 | 11:15 | 11:45 |
| 0600–0659 | 14:30 | 17 | 13:35 | 15 | 12:15 | 12:50 |
| 0700–1259 | 15:50 | 18:30 | 14:50 | 16:25 | 13:30 | 14 |
| 1300–1659 | 14:30 | 17 | 13:35 | 15 | 12:20 | 12:45 |
| 1700–2359 | 13:15 | 15:20 | 12:20 | 13:35 | 11:15 | 11:40 |

The ARC calculated the maximum scheduled FDPs in Table D for augmented flightcrew members who are not acclimated based on the same methodology provided for acclimated flightcrew members in Table C above. However, for unacclimated flightcrew members there is a roughly 30-minute reduction in the planned maximum FDP for augmentation calculation. The absolute cap of 16 and 18 hours would correspondingly be reduced to 15.5 and 17.5 hours, respectively.

The FAA has decided to propose the augmentation levels proposed by the ARC in Table C, except that the numbers have been rounded up or down to the closest half hour for regulatory efficiency. As suggested by the ARC, acclimated operations are capped at 16 hours if only a three-man crew is available and 18 hours if a four-man crew is available. In addition, the FAA is not proposing to implement Table D into the regulatory text because it is essentially a thirty minute reduction from Table C. Rather, the regulatory text specifies that the numbers in Table C are reduced by 30 minutes if a crew is not acclimated. This approach is consistent with the one proposed for un-augmented operations.

The ARC noted that augmentation should be used strictly for long flights and not to extend the FDP for multiple short flight segments. The ARC discussed whether more than two flight segments should be permitted in augmented flight operations and, if so, should an FRMS be required to do so. Some members of the ARC cautioned that augmentation should not be permitted to facilitate unnecessary additional flight segments or eliminate crew swaps. These individuals argued that augmentation was initially permitted to address those flights that could not reasonably be conducted within the existing rules at that time because the distances involved prevented long layovers or crew swaps. This issue was particularly relevant to the discussion of whether augmentation should be used for domestic operations. The primary concern related to multi-segment augmented flights was the available sleep opportunity for flightcrew members. Everyone acknowledged that flightcrew members are not going to sleep during take-off and landing. Accordingly, flight segments need to be sufficiently long to permit the flightcrew members to actually sleep. The ARC agreed that a flightcrew member assigned to a multi-segment trip needs a specific amount of available time to rest to fly the multiple segments.

The FAA agrees that short flight segments will not permit a flightcrew member to sleep. Thus, too many flight segments, even within an extended FDP, would not allow a meaningful sleep opportunity for the flightcrew. The FAA is proposing that a certificate holder not schedule an augmented crew pairing with more than three segments (including FDPs that include required technical stops such as stopping for fuel or to clear customs). In addition, two consecutive hours must be available for in-flight rest for the flightcrew member manipulating the controls during landing; a 90-minute consecutive period must be available for in-flight rest for each flightcrew member; and the last flight segment must provide a two consecutive hour rest period. The proposed requirement for the 2-hour rest opportunity on the last flight segment is designed to address a common recognition among the ARC members that, even on a flight with only two segments, the last segment is often of such duration that there is no realistic rest opportunity, even though this is when the crew is likely to be the most fatigued.

The ARC discussed the qualifications of the relief flightcrew member used in augmented operations. Some ARC members emphasized that there must be one type-rated flightcrew member on the flight deck at all times. One ARC member noted that current regulations require only one type-rated flightcrew member on the aircraft. Another ARC member stated that under no circumstances should a flight engineer serve as a relief flightcrew member. The ARC proposed that at least one flightcrew member type-rated in the aircraft be on the flight deck at all times. The ARC largely deferred to the FAA in deciding whether to allow augmentation based on the presence of a flight engineer.

As mentioned earlier in this section, the FAA does not believe a flight engineer may serve as a relief flightcrew member unless he or she is qualified as a PIC or SIC and type rated. The purpose of a relief flightcrew member is to have someone available to help fly the airplane when another flightcrew member is at rest. In order for him or her to do this, the relief flightcrew member must know how to actually operate the aircraft.

The FAA seeks comment on the following:

(15) Should augmentation be allowed for FDPs that consist of more than three flight segments? Does it matter if each segment provides an opportunity for some rest?

(16) Should flight time be limited to 16 hours maximum within an FDP, regardless of the number of flightcrew members aboard the aircraft, unless a carrier has an approved FRMS?

(17) Should some level of credit be given for in-flight rest in a coach seat? If so, what level of credit should be allowed? Please provide supporting data.

(18) Is there any reason to prohibit augmentation on domestic flights assuming the flight meets the required in-flight rest periods proposed today?

(19) Are the proposed required rest periods appropriate?

(20) Should credit be allowed if a flightcrew member is not type-rated and qualified as a PIC or SIC?

2. Split Duty Rest

The concept of allowing mitigation for split duty sleep is similar to that for augmentation, in that a crewmember can regenerate to some extent because of the ability to sleep for a period of time during his or her FDP. In fact, the quality of the sleep facility may be significantly better than the quality of a sleep facility aboard an aircraft. However, the initial theory behind augmentation was that it was impossible to simply place a fresh crew aboard the aircraft. While that may be true in some instances where split duty rest is contemplated, it is not universally true. In any case, current regulations provide no incentive for a carrier to provide its flightcrew members with a rest opportunity outside of the mandatory rest requirements. Nevertheless, some carriers have spent considerable amounts of money developing rest facilities for their employees, and others provide hotel rooms, even though not required by the FAA. Carriers have taken these steps recognizing that, even though not required, providing the rest facilities increases the level of safety.

The ARC discussed the concept of split sleep with the sleep specialists to assess the value of the type of rest obtained on a split duty trip. The scientists noted that split sleep is an area of intensive work. All other factors being equal, if the total amount of actual sleep is the same, split sleep is theoretically as valuable as continuous sleep.[31] However, the presenters noted that the value of sleep is impacted by where it falls in the circadian cycle. They stated that split sleep with 4 hours sleep during a circadian night is better than 8 hours of continuous sleep during the day. However, the larger portion of split sleep ideally would fall during the WOCL, and they reiterated that split sleep with a component at night is better than consolidated sleep during the day. This is because the ability to sleep effectively is diminished during daytime hours because it is very difficult to get continuous sleep during this time. They also stressed that actual sleep is important, and noted that a 4-hour sleep opportunity may only net 2 hours of actual sleep.[32]

The ARC discussed extending the FDP based on the opportunity for sleep during the duty period and the mitigations needed to extend the FDP. These mitigations would apply to split duty trip pairings (including continuous duty overnights, also known as CDOs), in which a flightcrew member has a downtime of several hours between flights within the same FDP.

Some members of the ARC rejected the concept of a regulatory credit for split duty sleep, while others noted that it is fully consistent with the concept of extending FDPs based on augmentation. The ARC considered allowing a certificate holder to extend the FDP up to 50 to 75 percent of time that a flightcrew member spent resting in a suitable accommodation up to a maximum FDP of 12 to 13 hours as long as certain conditions were met. First, the sleep facility should be a single occupancy, temperature-controlled facility with sound mitigations that provide a flightcrew member with the undisturbed ability to sleep in a bed and to control light. Second, the flightcrew member must be given an actual, not simply scheduled, sleep opportunity in the suitable accommodation. Some ARC members also suggested that there should be a requirement that the sleep facility be approved by the FAA, there be an employee feedback process to assure the facilities were adequate, and that the opportunity for rest coincide with the flightcrew member's circadian rhythms.

The FAA is proposing to permit credit for split duty sleep consistent with the proposal presented by those members of the ARC supporting credit. A reasonable sleep opportunity must actually be provided (as opposed to simply scheduled), and the sleep facility must be adequate to reasonably allow sleep. A carrier could extend an FDP by 50 percent of the actual available sleep opportunity if it provides at least 4

[31] However, they also noted that there is an overhead involved in getting to sleep, and that split sleep multiplies that overhead. Therefore, split sleep with 4 hours at night and 4 hours during the day would, over time, result in a cumulative sleep debt.

[32] The presenters stated that it is less clear if a split sleep involving a 2-hour sleep segment and a 6-hour sleep segment is equivalent to eight hours of continuous sleep.

hours sleep opportunity. However, the FDP could not be extended beyond 12 hours.[33] The sleep opportunity is calculated from the time the flightcrew member actually reaches the sleep facility, rather than when it is scheduled. This is because a scheduled sleep opportunity may be reduced considerably if there are delays or an unanticipated need for further aircraft movement. As with all other instances when transportation to or from a rest facility is involved, the period of time engaged in transportation does not count as duty, but it also does not count as rest.

The rest facility must be adequate to reasonably permit the flightcrew member with an opportunity to rest. To that end, it must be quiet, temperature-controlled, and light-controlled. The FAA considered whether to require that it also be a single occupancy facility. The agency has tentatively decided against such a requirement because it understands that there are currently facilities where there may be more than one bed per room, and it believes this is fundamentally a labor-management issue. Flightcrew members regularly spend the night near their home base in houses or apartments where there may be multiple beds in a single room. If this dormitory-type housing is sufficient for full rest periods, it should, from a regulatory perspective, be sufficient for a split rest facility.

The FAA seeks input on the following:

(21) Please comment on whether a single occupancy rest facility provides a better opportunity for sleep or a better quality of rest than a multiple occupancy facility such as a multi-bed crew sleeping facility or multi-bed living quarters. Please provide supporting data.

*H. Consecutive Nighttime Flight Duty Periods*

There was a discussion among ARC members on whether there should be a limitation on the number of consecutive nights that a pilot could fly, based, in part, on a presentation to the ARC that performance falls off under the SAFTE/FAST model after the third night. Currently the FAA places no restrictions on the number of allowable consecutive nighttime operations, as long as the crewmember receives 24 consecutive hours free from duty in a 7-day period. CAP–371 provides a scheme whereby flight duty periods are reduced based on the number of previous consecutive nights flown. The FAA is unaware of the basis for this scheme, and it is not readily apparent from a reading of the requirement.

Modeling indicates that consecutive nights of nighttime work will lead to a decrease in productivity over a relatively short period of time (approximately 3 days). The modeling notes a steady deterioration in performance because it is very difficult for most people to sleep effectively during the day.[34] The members of the ARC who had flown nighttime operations generally agreed that the first night of multiple nighttime operations was the most difficult because they were unaccustomed to being awake all night.

During the ARC discussion, the cargo contingent of the part 121 community asserted that if one changes the assumption in the SAFTE/FAST model and assumes that one can train oneself to sleep effectively during the day, it may be possible to work more consecutive nights without a significant degradation in performance. This may be particularly true if an individual is provided an opportunity to sleep during the night while packages are being sorted from one plane to the next. The cargo carriers asserted that higher levels of sleep pressure brought on by the longer period of wakefulness on day one of the pairing act to offset the general inability to sleep effectively during the day, particularly when people have been trained to understand the need to take advantage of the sleep pressure to improve their ability to sleep during the day. The FAA has asked Dr. Hursh, who developed the SAFTE/FAST model,[35] to input these assertions into the model. Dr. Hursh determined that, given a sufficient sleep opportunity at night, a person can sustain his or her performance at acceptable levels for five consecutive nights. However, the smaller the nighttime sleep opportunity, the lower level of performance, particularly by night five. In addition, training on how to maximize sleep opportunities is critical because an individual needs to get enough sleep during the day to make up for the nighttime sleep deficit. A copy of Dr. Hursh's analysis has been placed in the docket for this rulemaking.

The FAA has decided to take a comprehensive approach towards consecutive nighttime operations that it believes addresses the concerns by both contingents within the ARC. The agency proposes to permit consecutive nighttime flying, constrained only by 30-hour consecutive rest required for any 168-hour period, as long as there is an opportunity to rest in a suitable facility during the flight duty period. As proposed, this sleep opportunity would have to comport with the proposed split duty requirements for extending a flight duty period. Should no such opportunity be provided, a carrier could not assign a flightcrew member to more than three consecutive nightime FDPs. While this approach is more restrictive than currently permitted, it permits cargo carriers who provide adequate rest facilities to continue their current operations. It also assures that flightcrew members are given an opportunity for limited nighttime rest.

The FAA has concerns that simply limiting nighttime operations to three consecutive nights could result in a significant increase in the number of first night operations, since presumably carriers will not change the nature of their operations, but simply will schedule more multiple-night crew pairings to accommodate the existing operations. Thus, a flightcrew member who is currently assigned two 5-night pairings in a 2-week period could potentially be assigned three 3-night pairings in the same 2-week period, increasing the risk associated with the first night of operations by 50 percent during that timeframe. Certainly long-standing industry practice has been to fly more than three consecutive nights. The FAA is concerned that taking an approach that may appear safer in modeling could lead to adverse safety impacts in the real world.

The ARC contingent advocating restrictions on consecutive night flight duty periods suggested a fourth night was acceptable as long as a 14-hour rest was provided between nights three and four. The FAA notes that a 14-hour rest opportunity would limit a flightcrew member to a maximum 10-hour duty

[33] As a practical matter, the 12-hour limitation on FDP makes split duty sleep desirable only for nighttime operations or operations that begin late at night and restart very early in the morning. The FAA believes it is unlikely a carrier would rely on split duty sleep opportunities in the middle of the day because there would be no additional credit.

[34] A copy of the technical report evaluating the model has been placed in the docket. See also, Rosekind, M.R., Gander, P.H., Graeber, R.C., Connell, L.J., Gregory, K.B., Miller, D.L., & Barnes, R.M. (1998). Crew factors in flight operations: The initial ASA-Ames field studies on fatigue. Aviation, Space, and Environmental Medicine, 69 (2), B1–B60. Thomas, M.J.W., Petrilli, R.M., Roach, G.D. (2007). The Impacts of Australian Transcontinental "Back of Clock" operations on sleep and performance in commercial aviation flight crew (B2005/0121). Adelaide/Whyalla, Australia: University of South Australia, Centre for Applied Behavioural Science. Gander, P.H., Gregory, K.B., Connell, L.J., Miller, D.L., Graeber, R.C., & Rosekind, M.R. (1996). Crew factors in flight operations: VII. Psychophysiological responses to overnight cargo operations (NASA/TMm1996–110380). Moffett Field, CA: NASA Ames Research Center.

[35] This model is widely used, with approximately 14 major carriers and sixteen governmental agencies world-wide having used the model to evaluate fatigue in aviation and other industrial settings.

period, excluding the time required for local commuting.[36] The FAA is not sure that this approach would provide a meaningful FDP for the fourth night.

The FAA requests input on the following:

(22) Should there be any restriction on consecutive nighttime operations? If not, why?

(23) If the nighttime sleep opportunity is less than that contemplated under the split duty provisions of this notice, should a carrier be allowed to assign crew pairing sets in excess of three consecutive nights? Why or why not?

(24) If the nighttime sleep opportunity meets the split duty provisions of this notice, should the carrier be allowed to extend the flight duty period as well as the number of consecutive nighttime flight duty periods? Why or why not?

(25) Should a fourth night of consecutive nighttime duty be permitted if the flightcrew member is provided a 14-hour rest period between nights three and four?

*I. Reserve Duty*

While the term "Reserve" has been used for years in the air carrier industry, the term is not addressed at all in part 121. The agency has issued 11 legal interpretations on the subject of reserve, which range from examples of whether a crewmember is on duty and, if applicable, whether the required rest associated with that duty period is impeded by being in a reserve status.

The ARC discussed various definitions of reserve and initially proposed that reserve means that a pilot that does not have a regular flying schedule and is available for flight when contacted by the company. That pilot has no telephone or reporting responsibility to the company. The ARC refined the definition of "reserve" to read "a flightcrew member that is required by a certificate holder to be available to receive an assignment for duty." In addition, the ARC established the following types of reserve duty: Long-call, short-call, and airport/standby. The ARC noted that the policies that apply to reserve flightcrew members vary significantly between certificate holders, but also found that there are some relatively consistent conditions.

CAP–371 places restrictions on "Standby Duty", which is generally the equivalent of short-call reserve discussed below. When standby duty is undertaken at home, or in a suitable accommodation provided by the operator, during the period 2200 to 0800 hours local time and a crew member is given 2 hours or less notice of a report time, the allowable FDP starts at the report time for the designated reporting place. EASA recognizes "standby duty", but does not place any regulatory restrictions on this type of duty.

Reserve duty is inherently based on unpredictable events, such as covering trips for flightcrew members who become ill, have difficulty traveling to the airport for an assignment because of weather or other reasons, or are stranded due to severe weather creating flightcrew member shortages throughout a certificate holder's system. The very nature of reserve duty makes injecting predictability into a reserve flightcrew member's schedule a challenge.

The ARC set a goal to make reserve duty as predictable as possible, and to manage fatigue as much as possible. The proposal on how to address reserve limits was one of two areas of consensus by the ARC. The ARC concept includes defining limits associated with flight duty period, duty period and rest limitations.

One of the most fatiguing elements of reserve duty is the lack of predictability. Unlike a flightcrew member who has a set schedule (a line-holder), a flightcrew member on reserve may spend several hours on-call and then, once called, be expected to report to the airport ready to commence his or her duty day. The lack of predictability means the reserve crewmember cannot schedule naps or otherwise control his or her sleep opportunities to assure the reserve crewmember is adequately rested when he or she reports to work.

The ARC asked the sleep specialists what impact this lack of predictability has on a reserve flightcrew member compared to a line-holding flightcrew member. The presenters responded that depending on when a reserve flightcrew member is called and how much notice is given, he or she may not have the same opportunity to nap that a line-holder would have, because the line-holder would know about the trip and could plan his or her rest accordingly. A reserve flightcrew member also might not nap, even if he or she thought a call was unlikely, because this uncertainty may disrupt his or her sleep schedule. The ARC asked the scientists how a reserve flightcrew member could best prepare for a potential assignment, without knowing when he or she may be called. They recommended a normal night's sleep through the WOCL and a late afternoon nap in the minor WOCL. The ARC also asked the presenters if there was a maximum duty time that should be set for reserve duty. The scientific presenters noted that the ability to successfully manage time-on-duty is dependent on rest. If 8 hours sleep in the WOCL is available, then 16 hours of duty is theoretically possible.

Short-Call and Airport/Hotel Standby Reserve

Airport/standby reserve[37] is known by several terms among various certificate holders, but ultimately involves a flightcrew member on call at an accommodation or other facility at or near an airport. The flightcrew member is not at home and is not resting. The purpose of such reserve duty is to have an available flightcrew member close to the operation in case of a schedule irregularity. Flightcrew members on these assignments can receive notice to report to work in as little as 1 hour before departure time, requiring them to be in a constant state of readiness. Because of the unique nature of these assignments, and the fact that the flightcrew member is not resting, an airport/standby reserve assignment is considered to be an FDP, regardless of whether a flying assignment is ultimately received by the flightcrew member.

Short-Call Reserve

A short-call reserve flightcrew member typically receives an assignment on relatively short notice, meaning he or she would not be provided an adequate time for a legal rest period before reporting for duty. Report times are typically within two to 3 hours from notification. Short-call reserve differs from airport/standby reserve in that the flightcrew member is likely to be at home and available for contact by the certificate holder, rather than at the airport or a hotel actively awaiting an assignment. Although the flightcrew member may be at home, the opportunity for sleep before reporting for duty cannot be guaranteed. Therefore, the ARC deemed a limit on the amount of time spent on short-call reserve duty as necessary.

The ARC noted that a number of variables may impact the maximum FDP for a short call reserve.[38] These variables include:

• *Timing of on-call period within a circadian day.* Where an on-call period starts in relation to standard circadian rhythms can affect alertness and state of

[36] Although today's proposal does not contemplate a 24-hour day, the FAA assumes that consecutive nighttime operations would generally be scheduled at approximately the same time each day.

[37] The word "airport" was added to standby to differentiate between the ICAO term "standby," which is the equivalent of "reserve" in U.S. terminology.

[38] These same variables apply to airport/standby reserve but are addressed there by the maximum FDPs in the FDP table.

rest. Generally, short call availability periods may be classified as very early morning, daytime, or night. The ARC considered that daytime reserve flightcrew members can be presumed to be well-rested and alert at the start of their reserve period because they can get a regular night's sleep. For the other classifications, circadian factors may make flightcrew members less alert and rested than those on daytime reserve. One ARC member suggested that flightcrew members called to report during overnight hours should have a reduced maximum FDP.

• *Length of on-call period.* Not all carriers have the same reserve policies. Some certificate holders have relatively short on-call periods, lasting only a few hours, while other certificate holders may require flightcrew members to be on call for 12 hours or more.

• *Timing of call and report time in relation to on-call period and length of duty day.* One ARC member noted that during an on-call period, the time the flightcrew member is called and the time the flightcrew member is expected to report may affect the flightcrew member's alertness and rested state (*e.g.,* called at 5 a.m. to report at 3 p.m. vs. called at 10 a.m. to report at noon).

• *Recent on-call history.* The ARC noted that reserve flightcrew members with on-call schedules often change schedules from day to night, or vice-versa, within a short period of time. Such changes, especially if given with short notice, can result in reserve flightcrew members failing to obtain proper rest before their on-call periods.

Long-Call Reserve

Long call reserve [39] pilots are given relatively substantial advance notice of when they are to fly. This notice may be from 9 hours to over 24 hours. A long-call reserve flightcrew member typically receives an assignment for duty well in advance and will have a sleep opportunity before reporting for duty, and may have enough notice of the assignment to plan his or her rest accordingly. The ARC recognized, however, that depending on the timing of notice and the report time in relation to circadian rhythms, reserve flightcrew members may not be able to obtain a full 8 hours of sleep, despite the opportunity to do so. The lack of predictability of when the flightcrew member will be required to report for duty makes it difficult for the reserve flightcrew member to plan ahead in his or her sleep rest cycles.

The ARC considered two reserve systems developed by working groups consisting of ARC members representing industry and labor groups.

One working group proposed a WOCL Aware Reserve System to the ARC. Some key points of the system are as follows:

• Any reserve flightcrew member called between 2200 and 0600 will receive a minimum of 10 hours of rest before reporting for duty.

• Any reserve flightcrew member called to fly into the WOCL would have to be contacted within the first 6 hours of his or her reserve duty.

• If normal sleep time is not interrupted and a reserve flightcrew member is not being called to fly into the WOCL, he or she would have the same FDP limit as a line-holder because they received similar rest.

• Airport/standby reserve is to be treated like a trip assignment and is considered as an FDP. No part of airport/standby reserve may be considered rest, even if the flightcrew member is at a hotel.

The proposal for a Predictable Reserve System with Circadian Stability (Predictable System) is based on three prongs: Science, circadian stability, and adequate rest. The proposal incorporates provisions from CAP 371, and provides some recommendations from a reserve rest ARC that convened in 1999. The second proposal contained the following elements:

Reserve Limits

• Created several definitions applicable to reserve including "reserve availability period" (RAP), "reserve duty period" (RDP), "short call reserve", and "long call reserve."

• Maximum RDP is 16 hours.

• Maximum reserve availability period (RAP) for short call reserve is 14 hours.

• Carrier receives half credit for not calling a reserve crew member on phone availability between 0000 and 0600; maximum 3 hours.

Shifting RAP

• Later—12 hour maximum in any 168 consecutive hours.

• Earlier—3 hour maximum into the WOCL; 5 hour maximum otherwise.

• Not allowed on consecutive days.

Concerns were expressed regarding individuals on phone availability being called during the window of circadian low. However, it was noted that based on scientific modeling, for a reserve called during the window of circadian low, a 4-hour lookback (the period in which the carrier must contact the reserve from the start of the RAP to use the entire available FDP) actually would be better than the 6-hour lookback originally proposed under the WOCL Aware proposal.

A scenario was also posed of a pilot with a RAP starting during the window of circadian low, but not called until after the window of circadian low had passed. It was proposed that some credit be given for the sleep obtained before being called. After brief discussion, the ARC decided to move forward with a maximum FDP limit of 16 hours after the start of the RAP.

After considering the above proposals and other discussions, the ARC proposed the following requirements for reserve duty:

• "Scheduled" is defined as times assigned by a certificate holder when a flightcrew member is required to report for duty. "Assigned" is defined as scheduling by a certificate holder when a flightcrew member is required to report to duty.[40]

• Airport/standby reserve counts as part of the flightcrew member's FDP.

• RAP and RDP only apply to short call reserve.

• The maximum RDP for un-augmented operations is the flightcrew member's possible FDP under the FDP table plus 4 hours, or 16 hours, whichever is less.

• The maximum RDP for an augmented flight crew is the flightcrew member's possible FDP under the augmented FDP table plus 4 hours.

• A carrier receives half credit for not calling a reserve crew member on phone availability between midnight and 6 a.m. up to a maximum of 3 hours (*e.g.,* if the crew member is on reserve starting at 1 a.m., but isn't called until 3 a.m., the RAP is extended by 1.5 hours).

• A short-call reserve duty period in which the crewmember is not called to report to work may not exceed 14 hours.

• Conversion from long-call to short-call reserve assignment must be preceded by a legal rest period.

• A long-call reserve flightcrew member must receive a legal rest prior to reporting for duty and at least 12 hours notice of an assignment of a trip pairing that will extend into the window of circadian low.

[39] The ARC defined a long-call reserve as "a reserve flightcrew member whose obligation to report for an FDP following notification contains a legal rest period before report time."

[40] The ARC notes that "assigned" and "scheduled" are one in the same; therefore, when a certificate holder assigns a reserve flightcrew member a trip, that certificate holder has given that flightcrew member a schedule. This prevents a certificate holder from assigning a trip to a flightcrew member and stating that the term assigned does not fall under the definition of scheduled. It also prevents certificate holders from only assigning trips and not scheduling any trips.

• A reserve flightcrew member's RAP may be shifted under the following conditions:

—A shift to a later RAP may not exceed 12 hours.

—A shift to an earlier RAP may not exceed 5 hours, or if the shift will move the availability into the flightcrew member's window of circadian low, it may not exceed 3 hours.

—A shift to an earlier RAP may not occur on consecutive days.

—The total amount of shift in RAPs for a flightcrew member may not exceed 12 hours (regardless of direction) in any 168 consecutive hour period.

Tables E(1) and E(2) are visual depictions of the maximum RAP discussed above based on the two FDP tables contemplated by the ARC.

TABLE E(1)—FLIGHT DUTY PERIOD RESERVE: TWO FLIGHTCREW MEMBERS, OPTION 1

| Time of start (home base) | Maximum flight duty period reserve (hours) based on number of flight segments | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7+ |
| 0000–0359 | 13 | 13 | 13 | 13 | 13 | 13 | 13 |
| 0400–0459 | 14 | 14 | 13 | 13 | 13 | 13 | 13 |
| 0500–0559 | 15 | 15 | 15 | 15 | 14 | 13.5 | 13 |
| 0600–0659 | 16 | 16 | 16 | 16 | 15 | 15 | 14.5 |
| 0700–1259 | 16 | 16 | 16 | 16 | 16 | 16 | 15 |
| 1300–1659 | 16 | 16 | 16 | 16 | 15.5 | 15 | 14.5 |
| 1700–2159 | 15 | 15 | 14 | 14 | 13.5 | 13 | 13 |
| 2200–2259 | 14.5 | 14.5 | 13.5 | 13.5 | 13 | 13 | 13 |
| 2300–2359 | 13.5 | 13.5 | 13 | 13 | 13 | 13 | 13 |

TABLE E(2)—FLIGHT DUTY PERIOD RESERVE: TWO FLIGHTCREW MEMBERS, OPTION 2

| Time of start (home base) | Maximum flight duty period reserve (hours) based on number of flight segments | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7+ |
| 0000–0159 | 13 | 13 | 13 | 13 | 13 | 13 | 13 |
| 0200–0459 | 14 | 14 | 14 | 14 | 13 | 13 | 13 |
| 0500–0659 | 16 | 16 | 16 | 16 | 15.5 | 15 | 14.5 |
| 0700–1259 | 16 | 16 | 16 | 16 | 16 | 16 | 15.5 |
| 1300–1659 | 16 | 16 | 16 | 16 | 15.5 | 15 | 14.5 |
| 1700–2159 | 15 | 15 | 15 | 15 | 13 | 13 | 13 |
| 2200–2259 | 14.5 | 14.5 | 14.5 | 14.5 | 13 | 13 | 13 |
| 2300–2359 | 13.5 | 13.5 | 13.5 | 13.5 | 13 | 13 | 13 |

Because this was one of only two ARC consensus areas, the FAA has decided to propose the ARC recommendation with only a few changes.

First, the agency has decided against adding Table E to the regulatory text. The agency believes the regulatory text is sufficiently clear. Also, the table does not include the credit that could be given for not calling during the reserve crew member's window of circadian low and could be misleading. Carriers (and the pilot associations) are of course free to draft whatever tables they think are helpful to understand the regulatory requirements.

Second, the ARC did not consider time within the RAP to be duty. However, the FAA believes that it may be appropriate to designate time spent in a short-call reserve status as duty.[41] While in a short-call reserve status, the crewmember can expect that he or she will not receive an opportunity to rest prior to commencing a flight duty period. The crewmember also is required to limit his or her actions sufficiently so that he or she can report to his or her duty station within a fairly short timeframe. Accordingly, the FAA believes this time needs to be accounted for within the cumulative duty limits discussed later in this document.

While the FAA is proposing the ARC recommendation on reserve, it also notes some concern with the level of its complexity. The agency is particularly concerned that the partial credit given for not calling during the window of circadian low will be difficult to implement. It may make more sense to simply assign a credit for not calling during the window of circadian low. The agency also has some concern that the RDP for augmented operations could extend to 22 hours. While there would be some opportunity to rest on board the aircraft, this proposal would permit some reduction in the overall rest opportunity.

The FAA seeks comment on the following:

(26) Please comment on whether a 16 maximum hour FDP for long call reserve is appropriate when the maximum FDP for a lineholding flightcrew member is 13 hours.

(27) Please comment on whether the proposed maximum extended FDP of 22 hours for an augmented flightcrew member is appropriate. If not, please provide an alternative maximum FDP.

(28) Please comment on whether a certificate holder should receive credit for not calling a flightcrew member during the WOCL while on reserve.

(29) Should minimum required rest while on reserve status be greater than the amount of rest required for a lineholding flightcrew member? If so, please provide supporting data, if not, please provide rationale.

(30) Please comment on the level of complexity on the proposed reserve system.

[41] This issue was not discussed by the ARC and there appears to be a general agreement in the aviation community that reserve is neither rest nor duty. The FAA agrees this approach is appropriate for long-call reserve and acknowledges that calling short-call reserve "duty" could have adverse implications if there were a daily duty limit. However, the FAA also believes that some portions of industry have developed reserve policies that increase the likelihood of fatigue because the reserve crewmember can spend long periods of time on reserve with no anticipation of a rest opportunity prior to reporting to work.

*J. Cumulative Duty Periods*

The FAA's current regulations do not impose a cumulative restriction on duty, although as a practical matter, a flightcrew member engaged in domestic operations is effectively limited to a 16-hour duty day and all flightcrew members are entitled to 24 consecutive hours free from duty during a 7-day period. Rather, the FAA has historically placed limitations on the number of flight hours a flightcrew member may be assigned on a daily, weekly, monthly, and annual basis. Depending on whether one is operating under domestic, flag or supplemental rules, flight time is limited to 30–32 hours a week, 100–120 hours a month, 300–350 hours a quarter, and 1,000 hours a year.

CAP–371 and EU–OPS subpart Q impose more restrictions on cumulative duty, with weekly limits ranging from 55 to 60 hours, biweekly limits of 95 hours (CAP–371 only), and slightly less than monthly limits of 190 hours (calculated against 28 days rather than an actual month). The ICAO SARP recommend that member states restrict duty hours within any seven consecutive days or a week and 28 consecutive days or a calendar month.

Scientific studies suggest that long periods of time on duty infringe upon an individual's opportunity to sleep, thus causing a "sleep debt" which is also known as cumulative fatigue.[42] Some conclusions are based on experiments in sleep labs, and there is limited data either supporting or refuting that the amount of cumulative duty has a direct effect on cumulative fatigue.

Despite the lack of validated data, the FAA believes it is appropriate to take a conservative approach and is proposing to impose cumulative limitations on duty, flight duty periods, and flight time. Not only are cumulative limits consistent with current regulations here and abroad, but they offer protections against practices common in the aviation industry, where pilots commonly work more than an 8-hour day, often at varying times in a single week. The FAA proposes to set maximum duty limitations, flight duty periods, and flight time (block) periods based on specific time intervals. Fewer hours on duty can be equated to more opportunity for rest, which can mitigate the amount of cumulative fatigue experienced by a flightcrew member. The proposed limits decline over extended periods of time, *i.e.,* the 28-day limits are less than four times the weekly limits. This approach would allow flightcrew members to work long hours over a relatively short period of time, but prevent long duty periods over extensive lengths of time.

The ARC defined duty as "any task that crewmembers are required by the certificate holder to perform including, but not limited to: Flight duty, administrative work, ground training, ancillary training, positioning, and airport standby." The FAA believes this definition appropriately details the type of work commonly required of crewmembers except that, as discussed earlier, it believes that time spent on short-call reserve should apply to the cumulative duty limits proposed today.

Under today's proposal, duty time would be limited to 65 hours in any consecutive 168-hour period (7 days) and 200 hours in any consecutive 672-hour period (28 days). The FAA is proposing consecutive hourly limits that equate to 7 and 28 days because the current requirements assume that a day starts just after midnight, which is an arbitrary constraint that does not work well for carriers. As a result, carriers have been allowed to define when their "day" begins. This approach is unwieldy. As a practical matter, the FAA expects that carriers and flightcrew members will base their "week" on the time the flightcrew member reported for duty after completing his or her extended rest period.

The weekly limit could be extended by up to 10 hours to 75 hours during a rolling 168 hours and the 28-day limit could be extended to 215 hours if the duty period includes deadhead segments in a rest seat outside the flight deck meeting or exceeding the provisions of class 2 rest facility.[43]

Allowing an additional 10 hours duty time for non-FDP deadhead flights when adequate sleeping accommodations are provided seems to be a reasonable accommodation to that sector of the industry that relies on deadheading to position pilots to areas outside of the U.S. Since the extension is limited to no more than 10 additional hours, there should be sufficient fatigue mitigation.

Since short-call reserve periods are tentatively considered to be duty, the FAA also believes it is appropriate to allow carriers to increase the maximum cumulative duty periods to account for the time spent on short-call reserve, while still recognizing that time spent on reserve is less strenuous than time actively spent on duty.

The FAA also notes that it may be appropriate to provide the same accommodation to management personnel. The rationale for allowing longer duty periods based on deadhead segments centered on the fact that deadheading in a "rest seat" provided mitigation in the form of an opportunity to rest; office work would not allow for such mitigation, but limiting the duty period to 65 hours a week for management could have an adverse safety impact (e.g., force flying shorter, unaugmented flights) since the management workload likely will not be reduced.

The extension of the maximum duty limit would only be extended by the amount of time spent engaged in the type of duty allowing for an extension. Thus, if a flightcrew member spent 5 hours on short-call reserve, the maximum weekly duty period would only be extended by 5 hours, to a total of 70.

The proposed cumulative limitation on flight duty periods is largely consistent with the approach already adopted by the British and EASA. Specifically, the ARC recommended that flight duty period be limited to 60 hours in any consecutive 168 hours (7 days) and 190 hours in any 672 consecutive hours (28 days). The ARC decided there was no need to implement a biweekly requirement, as exists in CAP–371, instead endorsing the approach adopted by EASA. The FAA agrees that a weekly and monthly approach sufficiently mitigates the effects of cumulative fatigue and is proposing the limits suggested by the ARC. The FDP is a sub-set of duty, and the maximum FDP limits are subsumed within the maximum duty limits. To the extent any duty other than that encompassed in the definition of a FDP cannot be completed within the time dedicated to non-FDP duty (typically 5 hours a week or 10 hours in a 4-week period), the amount of FDP is correspondingly reduced. Thus, during a 168-hour period, if a flightcrew member spent 30 hours in ground

[42] Krueger, G.P. (1989). Sustained work, fatigue, sleep loss and performance: a review of the issues. Work & Stress. 3, (2), 129–141. Galy, E., Melan, C., & Cariou, M. (2008). Investigation of task performance variations according to task requirements and alertness across the 24-h day in shift workers. Ergonomics, 51 (9), 1338–1351. Rosekind, M.R., Gander, P.H., Gregory, K.B., Smith, R.M., Miller, D.L., Oyung, R., Webbon, L.L., & Johnson, J.M. (1996). Managing fatigue in operational settings 1: Physiological considerations and countermeasures. Behavioral Medicine, 21, 157–165. Graeber, R.C. (1986). Crew factors in flight operations: IV. Sleep and wakefulness in international aircrews (NASA/TMm1986–88231). Moffett Field, CA: NASA Ames Research Center. Gander, P.H., Graeber, R.C., Connell, L.J., & Gregory, K.B. (1991). Crew factors in flight operations: VIII. Factors influencing sleep timing and subjective sleep quality in commercial long-haul flight crews (NASA/TMm1991–103852). Moffett Field, CA: NASA Ames Research Center.

[43] Except that no curtain need be provided if the crewmember is being deadheaded commercially, since this would be beyond the certificate holder's control.

training, the available amount of FDP for that period would only be 35 hours.

"Flight time" retains the meaning in 14 CFR 1.1. While the ARC largely agreed on a 100 hour limitation in any 672 consecutive hours (28 days), it was unable to agree on a maximum annual limit. Some argued that the constraints on cumulative duty and flight duty periods obviated the need for any limit. This argument was particularly strong with regard to annual limits on flight time. However simple calculations of the proposed weekly and 28-day limits revealed that absent an annual limit, a flightcrew member could potentially accrue as many as 2,000 flight hours in a 12-month period. Based on this assessment, those arguing against any limit conceded that some annual limit may be appropriate, but that in any case the current limit of 1,000 hours per year could be relaxed to 1,200 hours. Others argued that the current annual limit is too high and urged the FAA to consider a 900 hour limit. The FAA has tentatively decided to retain the current annual flight time limitation of 1,000 hours in any 365 consecutive days because the ARC members were unable to agree and the current limit is within the limits presented by the ARC.

(31) The FAA seeks input on the appropriate cumulative limits to place on duty, flight duty periods and flight time. Is there a need for all the proposed limits? Should there be more limits (e.g., biweekly, or quarterly limits)?

(32) The FAA also asks for comments on measuring limits on an hourly rather than daily or monthly basis. Does this approach make sense for some time periods but not for others?

*K. Rest Requirements*

1. Pre-Flight Duty Period Rest

Adequate rest is the most critical component of fatigue mitigation. As such, it is critical that the FAA implement unambiguous rest requirements that address both the potential for fatigue on a daily basis and the risk posed by cumulative fatigue. Currently, 14 CFR part 121, subparts Q, R and S address rest limits within a 24-hour period. However, certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer and a payload capacity of 7,500 pounds or less, may comply with the less stringent requirements of 14 CFR sections 135.261 through 135.273. Perhaps the largest problem with the existing regulations is that there is no mechanism to assure that rest is provided prior to flight, and there is no guarantee that the 9-hour rest requirement results in 8 hours of actual sleep opportunity.

In addition, the existing requirements do not adequately apprise the regulated community on what constitutes being free from duty. The FAA has issued 55 legal interpretations regarding rest that apply to pilots, flight attendants and dispatchers, many of which relate to whether a crew member is at rest when required to answer phone calls or pagers or otherwise be in contact with the carrier.

CAP–371 defines rest as a period of time before starting a flight duty period which is designed to give crew members adequate opportunity to rest before a flight. The minimum rest period must be as long as the preceding duty period, or 12 hours, whichever is greater. After being called out from reserve, the length of minimum rest is determined by the length of reserve duty, time spent on positioning, and any completed FDP.

EASA defines a rest period as a continuous and defined period of time, subsequent to and/or prior to duty, during which a crew member is free of all duties. Certificate holders are required to ensure that rest periods provide sufficient time for flightcrew members to overcome the effects of the previous duties and be well rested for the next FDP. In addition, a certificate holder must ensure that the effects on a flight crew passing through different time zones are compensated for with additional rest. As is the case with CAP–371, the EU OPS subpart Q requires that minimum rest for an FDP beginning at home base must be at least as long as the preceding duty period or 12 hours, whichever is greater. If the FDP begins away from home base, the rest must be as long as the preceding duty period or 10 hours, whichever is greater. Within this rest period, a certificate holder must provide at least 8 hours of opportunity for sleep. EU OPS subpart Q also requires certificate holders to increase the minimum rest periodically to a weekly rest period. The pilot-in-command also may reduce rest in the event of unforeseen circumstances.

As discussed earlier, the study of sleep science is somewhat settled on the following points: The most effective fatigue mitigation is sleep; an average individual needs to have an 8-hour sleep opportunity to be restored; 8 hours of sleep requires more than 8 hours of sleep opportunity; and daytime sleep is less restorative than nighttime sleep.[44] For most people, 8 hours of sleep in each 24 hours sustains performance indefinitely.[45] There is a continuous decrease in performance as sleep is lost. Examples of this reduction in performance include complacency, a loss of concentration, cognitive and communicative skills, and a decreased ability to perform calculations. All of these skills are critical for aviation safety.[46]

The scientific presenters stated that during long pairings with significant time zone shifts, a minimum of 24 hours off would be necessary for flightcrew members to find an adequate sleep opportunity, and sufficient time free from duty.[47] A minimum of two nights of sleep might be necessary to acclimate to a different time zone.[48]

The scientific presenters noted that an individual's circadian clock is sensitive to rapid time zone changes. They added that long trips present significant issues requiring mitigation strategies.[49] Twenty-four or 48 hours of rest may not be adequately restorative during a trip pairing where a flightcrew member is working 20 days separated by 24-hour layovers. In some cases, shorter rest periods, such as 18 hours or less, may

[44] Akerstedt, T., & Gillberg, M. (1981). The circadian variation of experimentally displaced sleep. Sleep, 4 (2), 159–1659. Akerstedt, T., & Gillberg, M. (1990). Subjective and objective sleepiness in the active individual. International journal of neuroscience, 52 (1–2), 29–37. Gander, P.H., De Nguyen, B.E., Rosekind, M.R., & Connell, L.J. (1993). Age, circadian rhythms, and sleep loss in flight crews. Aviation, Space, and Environmental Medicine, 64 (3), 189–195.

[45] Rosekind, M.R., Gander, P.H., Gregory, K.B., Smith, R.M., Miller, D.L., Oyung, R., Webbon, L.L., & Johnson, J.M. (1996). Managing fatigue in operational settings 1: Physiological considerations and countermeasures. Behavioral Medicine, 21, 157–165.

[46] Caldwell, J.A., Mallis, M.M., Caldwell, J.L., Paul, M.A., Miller, J.C., & Neri, D.F. (2009). Fatigue countermeasures in aviation. Aviation, Space, and Environmental Medicine, 69 (1), 29–59.

[47] Gander, P.H., Myhre, G., Graeber, R.C., Anderson, H.T., and Lauber, J.K. (1985). Crew factors in flight operations: I. Effects of 9-hour time-zone changes on fatigue and the circadian rhythms of sleep/wake and core temperature (NASA/TMm 1985–88197). Moffett Field, CA. NASA Ames Research Center.

[48] Lamond, N., Petrilli, R.M., Dawson, D., and Roach, G.D. (2006). Do short international layovers allow sufficient opportunity for pilots to recover? Chronobiology International, 23(6), 1285–1294. Lamond, N., Petrilli, R.M., Dawson, D., and Roach, G.D. (2005). The impact of layover length on the fatigue and recovery of long-haul flight crew. Adelaide/Whyalla, Australia: University of South Australia, centre for Sleep Research.

[49] *See also,* Gander, P.H., Graeber, R.C., Connell, L.J., and Gregory, K.B. (1991). Crew factors in flight operations: VIII. Factors influencing sleep timing and subjective sleep quality in commercial long-haul flight crews (NASA/TMm 1991–103852). Moffett Field, CA: NASA Ames Research Center. Rosekind, M.R., Gander, P.H., Gregory, K.B., Smith, R.M., Miller, D.L., Oyung, R., Webbon, L.L. and Johnson, J.M. (1996). Managing fatigue in operational settings 2: An Integrated Approach. Behavioral medicine, 21, 166–170.

be more restorative because of circadian issues.

In defining a rest period, the ARC included the condition that a flightcrew member be free from all contact during a rest period. The proposed definition means that the certificate holder cannot contact a flightcrew member nor can the flightcrew member be required to contact the certificate holder during a rest period.

The ARC members agreed on a general approach towards rest without agreeing on the number of hours one needed to be free from duty to assure an 8-hour sleep opportunity. On the lower end, they developed a domestic rest requirement of 10 hours by working out in each direction from an 8-hour sleep opportunity, with 30 minutes on each end for transportation, and 30 minutes on each end for physiological needs such as eating, exercising and showering. Others on the ARC noted that a longer rest period was required to assure an 8-hour sleep opportunity.

For international operations, some members of the ARC suggested this rest requirement should increase to 12 hours. They noted that flightcrew members may require a longer rest period at international layovers because of issues with time zone changes and possible difficulties obtaining sleep because the flightcrew member is non-acclimated. There were also concerns raised with a potential for increased stress associated with communicating with air traffic control in countries where English is not the native language. Some ARC members acknowledged that the minimum period captures the same elements as the 10-hour requirement discussed above but includes an additional 2 hours to transit customs and immigration or travel a long distance to hotel accommodations in foreign destinations.

The ARC discussed permitting the minimum rest time to be reduced to a lower level due to unforeseen circumstances. On the one hand, this would allow the carrier to recover a schedule; on the other hand, the need for reduced rest may be based on factors, such as poor weather or mechanical problems with the aircraft, which are potentially more fatiguing than normal operations. Ultimately, the ARC members proposed to allow certificate holders to reduce a minimum rest period from 10 to 9 or 12 to 11 hours for operational flexibility in unforeseen circumstances, but to limit the number of times rest could be reduced to once in a 168-hour period. In addition, the decision to reduce minimum rest would be a joint decision between the pilot in command and the certificate holder.

The FAA is proposing flightcrew members be provided with a minimum of 9 hours rest prior to commencing a flight duty period. The agency has tentatively decided against proposing different requirements for domestic and international operations. Time associated with clearing customs and immigration or traveling longer distances to a hotel has been addressed by refining the time at which the rest requirement begins and ends, as discussed below. While the FAA agrees that changes in time zones and the need to acclimate require additional safeguards, the agency believes that it has already accommodated that additional risk in other provisions to the proposed rule. As to concerns raised with air traffic controllers who do not speak English as their primary language, the FAA is unconvinced that providing an additional 2 hour sleep opportunity after the flight has ended would have any impact on the stress associated with communicating with air traffic control after entering foreign air space. Based on the available sleep studies, it does not appear that a longer rest period immediately prior to commencing a flight in non-U.S. airspace would be necessary since presumably the flightcrew member has received the requisite amount of sleep to report to duty refreshed and well-rested.

As suggested by the ARC, the rest opportunity could be reduced by 1 hour once in any 168-hour period, but only if agreed to by the pilot in command. Under no circumstances may the opportunity to rest be reduced by more than 1 hour because such reductions would seriously encroach upon the 8-hour sleep opportunity. Should the time period between the beginning of the rest period and the time the flightcrew must report for transportation to the airport be less than 8 hours, the carrier would need to delay the next day's flight or make other crewing arrangements.

This proposal does not exactly mirror the ARC recommendation, because the FAA is proposing that transportation time to or from a duty station not be included in the minimum rest periods; nor would it be considered duty. Rather, the rest period would begin once the flightcrew members reach the hotel. The FAA's proposal does not change the intent of the ARC to generally assure an 8-hour sleep opportunity. However, the FAA believes that time in transit is not rest. In addition, the agency is concerned that allowing this time to be included in the rest period could result in a reduction in actual rest opportunity below 8 hours. The ARC members recognized this possibility and considered an approach whereby any time exceeding 30 minutes would not be considered in the rest period. Ultimately, the impact is the same; it is simply clearer from a regulatory perspective to acknowledge that time in transit is not rest. The FAA has decided against treating this time as duty because it recognizes that the permissible amount of cumulative duty is only nominally higher than the permissible amount of FDP and that the location of a rest facility is a lifestyle issue that is typically negotiated between the carriers and their unions.

The FAA seeks comment on the following:

(33) If transportation is not considered part of the mandatory rest period, is there a need for a longer rest period for international flights?

2. Cumulative Rest Requirements

Much as there should be cumulative limits on the amount of work a flightcrew member can be expected to perform in a week, there also needs to be an opportunity for rest that exceeds the amount of rest required on a daily basis. The scientific presenters to the ARC stated that cumulative fatigue is fatigue brought on by repeated mild sleep restriction or extended hours awake. They noted that the repeated infringement of duty time on the opportunity to sleep results in accumulated sleep debt and that the operative factor in recovery from cumulative fatigue is sleep. When a person has accumulated a sleep debt, recovery sleep is necessary. Recovery sleep requires an opportunity to obtain sufficient sleep to fully restore the person's "sleep reservoir." Recovery sleep should include at least one physiological night, that is, one sleep period during nighttime hours in the time zone in which the individual is acclimated.

The ARC discussed what would constitute rest sufficient to act as a restorative rest reset for the 168 consecutive hour rolling window. The ARC noted that current regulations require 24 hours free of duty in any 7 consecutive days dependent on the type of operation. The ARC considered whether reset rest should (1) incorporate a minimum of two physiological nights' rest, which would be variable based on when the FDPs began and ended, or (2) be a fixed number of hours ranging from 30 to 48 hours. The ARC proposed that a 30 to 36 hour rest during any 168 consecutive hours constitutes a restorative rest period. Those arguing for a 36 hour rest period noted that the 30 hour period would only rarely afford

one the opportunity for two physiological nights rest. Those supporting 30 hours noted that this time frame would allow for one physiological night's rest and at least one additional sleep opportunity, albeit less than a full 8 hours.

The FAA is proposing to impose a 30 hour continuous rest requirement for each rolling 168-hour period. This approach does not guarantee two consecutive physiological nights rest in a 7-day period. Rather, it provides for a single physiological night rest and a rest opportunity immediately preceding or following that night. Although this is less rest than suggested by some members of the ARC, it still represents a 25 percent increase over current requirements. In addition, the FAA believes the cumulative limits on duty and FDP during the same 7-day period should adequately mitigate the effects of cumulative fatigue.

*L. Fatigue Risk Management Systems*

A Fatigue Risk Management System (FRMS) is a carrier-specific method of evaluating how to best mitigate fatigue based on active monitoring and evaluation by the carrier and flightcrew members. This cooperative approach has the potential to provide a cooperative and flexible means of monitoring and mitigating fatigue during operations when the prescriptive approach is not optimal. An FRMS requires a carrier to develop numerous processes and structures within an operation. These measures lead to an effective management and mitigation of fatigue on the part of both the carrier and its employees that might affect the operation.

An FRMS requires that a baseline of fatigue effects be identified for the affected population, scientific modeling of respective work schedules, education and management of the process for all stakeholders, and effective evaluation and validation of the instituted policies. As a continuously improving system, the knowledge gained in developing and validating fatigue data should result in regular improvements in how the certificate holder and its employees manage and mitigate fatigue.

No country has adopted FRMS as a regulatory alternative. However, ICAO is actively considering requiring member states to implement some alternative means of compliance with existing rules, and EASA has proposed requiring FRMS as an integral part of an operator's management system. Permitting FRMS as a regulatory alternative to today's proposal is widely supported by industry, with several organizations requesting that the FAA adopt FRMS as a means of addressing fatigue. Theoretically, a carrier could apply its FRMS to all of its operations. Realistically, it would likely only be used when the carrier cannot meet the more prescriptive rules because of the nature of the specific operations.

The FAA has decided to include an FRMS option in today's proposal. A certificate holder may utilize this option when it has developed an FAA-approved equivalent level of safety for monitoring and mitigating fatigue specific to those operations.[50] The proposed regulatory text provides broad performance requirements that a certificate holder would need to demonstrate it met prior to the FAA granting approval. These requirements include an additional FRMS-specific training element above and beyond the general requirement proposed today. The extent of the additional training would be determined as part of the overall approval process.

While FRMS is not fully matured, the general concepts are well understood and have been developed in other contexts. For example, the approach used to obtain ultra-long range OpSpecs is essentially an FRMS, except that it does not contemplate flightcrew members providing feedback to the certificate holder or a system of accountability. The FAA's Advanced Qualification Program, which has been in place since 1990, also incorporates many aspects of an FRMS. In addition, ICAO is currently working on developing FRMS standards. The FAA is actively engaged in the development of these standards, as are at least two members of the ARC. Accordingly, the FAA believes that FRMS will be sufficiently robust to be implemented for operations that cannot otherwise be accommodated under the rule by the time the rule takes effect.

Generally, a certificate holder would need to demonstrate that its FRMS has an education and awareness training program; a fatigue reporting system; a system for monitoring flightcrew fatigue; a performance evaluation; and possibly an incident reporting process. The FAA issued advisory circular (AC) 120–103 entitled Fatigue Risk Management Systems for Aviation Safety [51] on August 3, 2010 outlining the types of data and processes a certificate holder would need to develop to receive FRMS approval from the agency. I

As is the case with the proposed training requirements, whenever the Administrator finds that revisions are necessary for the continued adequacy of an FRMS, the certificate holder would have to make any changes in the program deemed necessary by the Administrator after being notified that such changes are needed. This would likely be done through the OpSpec process.

The FAA requests comment on:

(34) Whether some elements of an FRMS, such as an incident reporting system, would be better addressed through a voluntary disclosure program than through a regulatory mandate?

*M. Commuting*

The impact of commuting to a duty station has been linked to increased fatigue, most recently in the crash in Buffalo, New York. Commuting is common in the airline industry, in part because of lifestyle choices available to pilots by virtue of their being able to fly at no cost to their duty station, but also because of economic reasons associated with protecting seniority on particular aircraft, frequent changes in the flightcrew member's home base, and low pay and regular furloughs by some carriers that may require a pilot to live someplace with a relatively low cost of living. While commuting to a duty station can be handled responsibly (particularly assuming one has the means), it is also subject to abuse.

The only current impediment to irresponsible commuting in the FAA's regulations is the general requirement in part 91 that pilots report to work fit for duty. CAP–371 provides that if journey time from home to normal home base is more than 1.5 hours, crew members should consider making arrangements for temporary accommodation nearer to base. This provision is not mandatory.

The ARC unanimously recommended that pilots be reminded of their existing obligations under part 91 to report to work fit for duty, but that the FAA impose no new requirements. The FAA has tentatively rejected this approach.

Commuting is fundamentally a fitness for duty issue. If a flightcrew member commutes irresponsibly, it is possible that he or she may become fatigued. A responsible commuter plans his or her commute to minimize its impact on his or her ability to get meaningful rest shortly before flying, thus fulfilling the proposed requirement that he or she reports for an FDP rested and prepared to perform his or her assigned duty.

The FAA considered proposing a requirement similar to the one in CAP–

[50] The FAA anticipates that all FRMS proposals would be evaluated and approved at headquarters by individuals within AFS–200 dedicated to overseeing FRMS.

[51] You may view the AC at *http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/319218.*

371 mandating that pilots arrive at the pilot's domicile airport in time to receive the pre-flight rest period in that area prior to commencing flight. At first blush, this approach has appeal, in that it would require a flightcrew member to have an opportunity for rest immediately prior to commencing an FDP. However, because commuting constitutes an activity conducted by a pilot on his or her own time, it is difficult to regulate. In addition, a strict commuting regulation, such as one that requires a pilot to report to a duty station area well in advance of the scheduled flight, would not necessarily result in more responsible commuting. A pilot could choose to commute during times that interfere with his or her WOCL (for example, taking a red eye for an afternoon flight), leaving him or her less rested for flight. This approach could also discourage responsible commuting. For example, today a flightcrew member can catch a mid-morning flight to his or her duty station and then commence his or her flying shortly after arrival a couple of hours later. The flightcrew member would have received a full night of sleep, and would be in a much better position to work than the individual who had taken an overnight or very early morning flight. While the irresponsible commuter would be available to fly by mid-afternoon, the mid-morning commuter would not be available to fly until late evening, just as he or she is beginning to tire.

The FAA does believe that it is unreasonable to assume that an individual is resting while commuting. Accordingly, time spent commuting, either locally or long-distance, is not considered rest, and a certificate holder will need to consider the commuting times required by individual flightcrew members to ensure they can reach their home base while still receiving the required opportunity for rest. This approach is consistent with that taken for transportation to and from a sleep facility other than home discussed earlier in this document.

The FAA also believes it is inappropriate to simply rely on the existing requirements in part 91 to report to work fit for duty. The FAA believes a primary reason that pilots may engage in irresponsible commuting practices is a lack of education on what activities are fatiguing and how to mitigate developing fatigue. The FAA has developed a draft fitness for duty AC that elaborates on the pilot's responsibility to be physically fit for flight prior to accepting any flight assignment, which includes the pilot being properly rested. Additionally, the AC outlines the certificate holder's responsibility to ensure each flightcrew member is properly rested before assigning that flightcrew member to any flight. That document has been placed in the docket for this rulemaking. Additionally, the proposed training program discussed earlier contains an element on the impact of commuting on fatigue.

*N. Exception for Emergency and Government Sponsored Operations*

The ARC discussed various types of supplemental operations that may not be adequately addressed by the proposed requirements.[52] These operations range from moving armed troops for the U.S. military and conducting humanitarian relief, repatriation, Civil Reserve Air Fleet (CRAF), Air Mobility Command (AMC), and State Department missions. Many of these types of supplemental operations fly into hostile areas, while others are conducted into politically sensitive, remote areas without rest facilities. The ARC recognized the uniqueness of these operations and noted that today some AMC and emergency operations are conducted under a deviation authority contained in 14 CFR 119.55 and 119. 57.

Currently, all flights operated by an air carrier under contract with a U.S. Government agency must comply with part 121 or part 135, including flight and duty time regulations. These operations include, but are not limited to:

- AMC contracts and other Department of Defense (DOD) contracts;
- State Department contracts;
- Department of Homeland Security contracts, including FEMA, humanitarian flights and Immigration and Customs Enforcement deportations; and
- Department of Justice contract flights.

Activation of the CRAF would allow military use of civil aircraft. CRAF is activated by presidential order in a time of war.[53] Under CRAF, air carriers are required to operate their aircraft at the direction of DOD. However, the activation of CRAF does not obviate the air carrier's responsibility to operate under part 121, including the flight and duty time regulations.

14 CFR 119.55 allows the FAA Administrator to authorize an air carrier who has a contract with AMC a deviation to any part of part 119, 121, or 135 for the operation under that contract. AMC reviews an air carrier's request for a deviation and either supports it or does not support it before AMC forwards the request to the FAA for a final decision.

14 CFR 119.57 allows the FAA Administrator to authorize deviations during an emergency under certain conditions. The FAA has used this authority in the past. For instance, an OpSpec was used during Hurricane Katrina to allow humanitarian flights into and out of New Orleans. This authority is issued on a case by case basis during an emergency situation as determined by the Administrator.

Neither of these current regulatory options fully address the needs of carriers who occasionally need to exceed the allowable FDP (with extensions) or who are operating under contract to a U.S. government agency other than AMC. These operations are distinguishable from tourism operations or operations where cargo shows up late to the aircraft for loading.

The FAA recognizes that all carriers could encounter circumstances that would require a flightcrew member to exceed the limits in the FDP, including extensions. The most likely scenario probably would be a diversion into an area where, for whatever reason, it would not be safe for the crew or passengers to stay. In addition, the FAA recognizes that there is a public policy interest in permitting the United States government to contract out certain operations to air carriers. If these operations were conducted on military aircraft, the pilots would generally be subject to a 16-hour duty day, almost all of which could be flight time.

Currently, if a military pilot flies a similar operation into a hostile area and must fly an aircraft out of theater due to a military exigency, and doing so would cause that pilot to exceed the military-mandated flight and duty time limits, that pilot can call his or her or her central command for permission to do so. A similar system, with FAA involvement, seems to make sense. In the event that there is no time to call back to the air carrier, the captain's emergency authority would allow the captain to move the airplane to safety, with a report to the FAA. Likewise, the pilot in command is always authorized to address emergency situations.

The concern of the FAA is not that circumstances may arise that require

[52] The FAA notes that cost is not the critical factor since a regulatory impact on crew costs would more than likely be passed on the Department of Defense via the uniform rate process, resulting in no increase in cost to the carrier. While crew costs are typically based on historical costs, the FAA has been informed that the uniform rate process is sufficiently flexible to allow projected costs when the cost increase is the result of a regulatory action.

[53] CRAF is currently not activated.

pilots to take emergency action, but rather that air carriers should know that delays in certain operations for the U.S. government are possible and plan accordingly. Air carriers should mitigate the chances of such an event, for instance by staging crews at other airports or installing rest facilities on the aircraft to allow augmentation, in order to ensure that flight crews will not exceed FDP limits. Fundamentally, a carrier needs to have performed adequate planning for the mission, including having the appropriate onboard rest facilities or number of flightcrew members for the length of the duty day, and the emergency should not be self-induced. If a certificate holder chooses not to equip an aircraft with adequate rest facilities, then the certificate holder should not be able to claim an inability to comply with requirements because of the lack of those facilities.

The FAA proposes to allow air carriers operating commercial flights and who are not under contract with a U.S. government agency to ask for a "one time deviation" to the FDP limits under part 121 for a one time event in exceptional circumstances. Each event of this type would be reported to the FAA. The number of "one time deviations" would be tracked by the FAA, as would the rationale for needing the deviation. If the Administrator determines that the carrier is relying excessively on this deviation authority, the air carrier would have to change its operations or develop an FRMS in order to mitigate the chances of such events happening in the future. There would be extra rest requirements after such an event.

For operations under contract with a U.S. government agency that cannot be conducted consistent with the general rules because of unique circumstances (such as when operating into an SFAR area, or when there is a declared military exigency that necessitates operations outside the scope of what the regulation contemplates), a different approach is proposed. Such operations could be conducted under an exception to the FDP and flight time limits, but not to the cumulative restrictions on FDP, flight time and duty. In addition, additional rest would be required and the carrier would have to demonstrate why the operations could not have been adjusted to prevent exceeding the daily limits. This could be done with a bi-monthly reporting requirement.

By tracking these events, the FAA can determine if the air carrier is properly planning its operations and mitigating the chances of its flight crews exceeding the FDP limits. The proposed regulation contemplates that the air carrier will develop an FRMS if it cannot restructure its operations so that only very few of those operations continue to need the exception. Sections 119.55 and 119.57 would remain unchanged and used as they are today.

(35) Are there other types of operations that should be excepted from the general requirements of the proposal? If so, what are they, and why do they need to be accommodated absent an FRMS?

## IV. Regulatory Notices and Analyses

*Regulatory Impact Analysis, Regulatory Flexibility Determination, and Unfunded Mandates Assessment*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. The FAA suggests readers seeking greater detail read the full regulatory impact analysis, a copy of which the agency has placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

*Benefits of the Rule*

During the past 20 years, there have been over 18 aviation accidents caused by pilot error where pilot fatigue was a factor. NTSB has identified five accidents where the flight crew started the day in a state of fatigue. We statistically identified 4.6 accidents where the flight crew became fatigued during a long flight-duty period (NTSB cited pilot fatigue as a contributing factor in three of those accidents). We have also statistically estimated that some of the 6.2 accidents that occurred between midnight and 6 a.m. involved some degree of pilot fatigue. Two of these have already been accounted for in the previously discussed analyses. There were also three accidents where the pilot became fatigued due to being awake for many hours. Lastly, there were two accidents where chronic fatigue was a contributing factor. In summary, we project there would be at least 18.8 accidents (13 passenger airplane accidents and 5.8 cargo airplane accidents) during the next 20 years where pilot fatigue would be a contributing factor to the accident.

Having projected the possible extent of fatigue based on the historical record, we estimate the likelihood of accidents happening in the future using simulation techniques. We also use simulation techniques to estimate future casualties, which we monetize. In this way, we estimate the potential benefits of the proposed rule. Finally, we model risk of fatigue for current pilot schedules, and compute the number of hours in higher risk categories with and without the rule. The projected reduction in fatigue exposure is corroborating evidence supporting this proposal. Pilot fatigue is a serious problem. If nothing is done about this problem, we can expect from one to possibly six aviation accidents a year where pilot fatigue will be a contributing factor. Pilot fatigue will be a contributing factor in many accidents that could potentially cost billions of dollars.

Using simulation analysis, the mean is 28.9 airplane accidents in a ten-year period. These accidents would result in a mean of 174.7 deaths. The estimated cost of these accidents would be a mean value of $1.581 billion ($1.121 billion, present value). These numbers represent an estimate of the likely number of

future accidents, deaths, and costs from future accidents with fatigue as a factor.

The above analysis establishes an estimate of the number and range of fatigue related accidents if no action is taken to address the problem. It is seldom the case that a rule is 100 percent effective at addressing an identified problem. In particular, fatigue is rarely a primary or sole cause of an accident, and therefore this rule, if adopted, is not likely to prevent all future accidents that include fatigue as a factor.

FAA reviewed all NTSB accident reports on part 121 accidents that occurred from 1990 through 2009 to assess the likely capacity of the NPRM to have averted those accidents. The FAA's Office of Accident Investigation & Prevention assessed the effectiveness of this rule to prevent accidents like those in the historical database. Most reports on major accidents (hull losses or non-hull losses that resulted in multiple fatalities) provided extensive data on flight crews' duty tours and recent rest periods, which facilitated relatively strong assessments.

The FAA's Office of Accident Investigation and Prevention (AVP) rated each accident by conducting a scoring process similar to that conducted by the Commercial Aviation Safety Team (CAST), a well documented and well understood procedure. All the accidents that have had final National Transportation Safety Board (NTSB) reports published have been scored against the CAST safety enhancements. When these accidents were not well defined in the probable cause or contributing factors statements of the NTSB reports, AVP used a Joint Implementation Monitoring Data Analysis Team (JIMDAT)-like method.

Following this scoring, the proposed rule would be 40 percent effective at preventing passenger airplane accidents where pilot fatigue was a contributing factor and would be 58 percent effective at preventing cargo airplane accidents where pilot fatigue was a contributing factor. Accordingly, the above estimate of the benefits of avoiding passenger airplane accidents where pilot fatigue was a causal factor have been reduced from their above stated values. The revised estimated benefits of avoiding passenger and cargo airplane accidents would be a mean value of $659.4 million ($463.8 million, present value).

*Cost of the Rule*

The total estimated cost of the proposed rule is $1.25 billion ($804 million present value using a seven percent discount rate) for the ten year period from 2013 to 2022. The FAA classified costs into four main components and estimated the costs for each component. We obtained data from various industry sources; the sources of the data used in cost estimation are explained in each section. We were very fortunate that several carriers ran two alternatives to the proposed rule through their crew scheduling programs. Their estimates provided some comparison data to calibrate and validate our costing approach. Without their help, we would have likely missed some cost elements. The table below provides a summary of the four main cost components. Flight operations cost makes up about 60 percent of the total cost of the rule. Each of the main cost components are explained in-depth in the following sections of this document.

**Summary of Costs**

| Cost Component | Nominal Cost (millions) | PV Cost (millions) |
|---|---|---|
| Flight Operations | $ 760.3 | $ 484.2 |
| Schedule Reliability | $ 4.9 | $ 3.0 |
| Fatigue Training | $ 262.3 | $ 167.2 |
| Rest Facilities | $ 226.6 | $ 149.1 |
| **Total** | **$ 1,254.1** | **$ 803.5** |

In addition to the costs presented in this table, there may be costs of a fatigue risk management system (FRMS). The FAA is not imposing an FRMS programrequirement on Part 121 carriers, but is allowing them the option of developing and implementing such a program. Operators might do this for ultralong flights, which have flight time over 16 hours. Operators might develop an FRMS program as an alternative to the flight and duty period rules proposed by this rulemaking when the crew scheduling cost savings equal or exceed the costs of the FRMS program. The FAA estimates that an FRMS program would cost between $0.8 and $10.0 million for each operator over ten years. The FAA believes that about 35 operators have at least partially adopted an FRMS program at this time. The FAA estimates the total cost would be $205.7 million ($144.9 million present value), which would be more than offset by a reduction in crew scheduling costs. Accordingly, the cost is not added to the total costs imposed by this rule. The FAA calls for comment on this aspect of the proposal as it has not assigned a cost to the cumulative maximums.

*Summary of Benefits and Costs*

Following NTSB recommendations regarding pilot fatigue, labor and industry worked together to provide the basis of this rulemaking. Furthermore, Congress has directed the FAA to issue a rule addressing pilot fatigue. We have validated the need for this rule in the benefit discussion. Based on the expected effectiveness of this proposed rule at preventing fatigue accidents with an averted fatality valued at $6 million, the simulation methodology produced benefits of $659.4 million with $463.8 million in present value. The total estimated costs of the proposed rule over 10 years are $1.25 billion ($804 million at present value). There is over a 7 percent probability that undiscounted cost of avertable passenger airplane accidents would exceed $1.25 billion and over a 10 percent probability the present value of

the cost of avertable passenger airplane accidents would exceed $804 million. The benefits from a near term catastrophic accident in a 150-passenger airplane with average load factor exceeds the cost of this rule. If $8.4 million were used for VSL, the undiscounted benefits would be $837 million and the present value of those benefits would be $589 million. When the value of an averted fatality increases to $12.6 million, the present value of the benefits equals the present value of compliance costs. In addition, the FAA has identified two additional areas of unquantified benefits: preventing minor aircraft damage on the ground, and the value of well rested pilots as accident preventors and mitigators. Due to data limitations, the FAA was unable to estimate the cumulative effect of preventing minor aircraft damage on the ground, but if the rule were to reduce damage by about $600 million over 10 years ($340 million present value) it would break even in terms of net benefits using a $6 million VSL. These considerations lend weight towards moving ahead with this proposal. FAA invites comment on this issue.

*Alternatives Considered*

FAA examined a number of alternatives to the proposed rule, scheduling alternatives and a training alternative. Since crew scheduling costs comprised the largest share of costs, most of the alternative analysis focused on these costs and these will be discussed first. Alternatives were selected using industry-proposed limits resulting from the ARC, as well as FAA-proposed limits. The table below summarizes each of the alternatives. For each of the scheduling alternatives, FAA developed a crew scheduling cost estimate using the same methodology as was used to determine the crew scheduling costs of the proposed rule.

*Summary of Crew Scheduling Alternatives*

| Scenario | Rest Time | | Duty Time | | Flight Time | |
|---|---|---|---|---|---|---|
| | Minimum Rest Prior to Duty - Domestic | Minimum Rest Prior to Duty - International | Maximum Flight Duty Time - Unaugmented | Maximum Flight Duty Time - Augmented | Maximum Flight Time - Unaugmented | Maximum Flight Time - Augmented |
| **Current Part 121** | Daily: 8-11 depending on flight time | Minimum of 8 hours to twice the number of hours flown | 16 | 16-20 depending on crew size | 8 | 8-16 depending on crew size |
| **Proposed Rule** | 9 | 9 | 9-13 depending on start time and number of flight segments | 12-18 depending on start time, crew size, and aircraft rest facility | 8-10 depending on FDP start time | None |
| **Scenario A** | 10 | 12 | 9-13 depending on start time and number of flight segments | 12-18 depending on start time, crew size, and aircraft rest facility | 7-9 depending on FDP start time | 16 |
| **Scenario B** | 9 | 11 | 9-13 depending on start time and number of flight segments | 12-18 depending on start time, crew size, and aircraft rest facility | 8-10 depending on FDP start time | None |

*Scenario A*

FAA provided a sample of carriers with a draft version of the proposed rule in fall 2009. The carriers estimated the cost of this version of the proposed rule using their own crew scheduling models and processes. FAA also estimated the costs of the same version of the proposed rule for the entire industry using the crew scheduling model and process outlined in the crew scheduling costs sub-section of the flight operations cost section described in the full regulatory evaluation. Scenario A table below presents the annual crew scheduling resource costs for the Scenario A alternative. As we were able to accomplish our safety objectives at a lower cost, we rejected this alternative.

**Scenario A Crew Scheduling Resource Costs**

| Year | Nominal Cost (millions) | PV Cost (millions) |
|---|---|---|
| 2013 | $ 375.7 | $ 306.7 |
| 2014 | $ 354.3 | $ 270.3 |
| 2015 | $ 320.9 | $ 228.8 |
| 2016 | $ 314.0 | $ 209.2 |
| 2017 | $ 307.0 | $ 191.2 |
| 2018 | $ 300.1 | $ 174.7 |
| 2019 | $ 293.2 | $ 159.5 |
| 2020 | $ 286.3 | $ 145.5 |
| 2021 | $ 279.4 | $ 132.7 |
| 2022 | $ 272.5 | $ 121.0 |
| **Total** | **$ 3,103.3** | **$ 1,939.6** |

*Scenario B*

FAA examined another, more restrictive version of the proposed rule. The main difference was that the minimum required rest for international duty periods was eleven hours. Scenario B table presents the final, adjusted crew scheduling resource costs of the Scenario B alternative.

**Scenario B Crew Scheduling Resource Costs**

| Year | Nominal Cost (millions) | PV Cost (millions) |
|---|---|---|
| 2013 | $ 254.7 | $ 207.9 |
| 2014 | $ 240.2 | $ 183.2 |
| 2015 | $ 217.5 | $ 155.1 |
| 2016 | $ 212.8 | $ 141.8 |
| 2017 | $ 208.2 | $ 129.6 |
| 2018 | $ 203.5 | $ 118.4 |
| 2019 | $ 198.8 | $ 108.1 |
| 2020 | $ 194.1 | $ 98.7 |
| 2021 | $ 189.4 | $ 90.0 |
| 2022 | $ 184.7 | $ 82.0 |
| **Total** | **$ 2,103.9** | **$ 1,314.9** |

*Summary of Crew Scheduling Alternatives*

The summary table below provides the ten-year total crew scheduling resource costs for the proposed rule and each of the alternatives. The proposed rule represents the lowest-cost alternative and achieves the FAA safety objectives.

**Alternative Scenarios Crew Scheduling Resource Cost Summary**

| Scenario | Nominal Cost (millions) | PV Cost (millions) |
|---|---|---|
| **Proposed Rule** | $ 1,366.7 | $ 854.2 |
| **Scenario A** | $ 3,103.3 | $ 1,939.6 |
| **Scenario B** | $ 2,103.9 | $ 1,314.9 |

*Fatigue Training Cost Analysis of Alternatives to the Proposed Rule*

Fatigue training costs account for approximately 20 percent of the total cost of the proposed rule. The FAA examined two scenarios for fatigue training requirements, ultimately selecting the lower-cost scenario for the proposed rule. The table below shows the different fatigue training requirements for each of the two scenarios.

**Table 44: Summary of Fatigue Training Requirements Alternatives**

| Scenario | Initial Fatigue Training (hours) | Annual Recurring Fatigue Training (hours) |
|---|---|---|
| **Proposed Rule** | 5 | 2 |
| **Scenario C** | 8 | 4 |

*Scenario C*

The fatigue training requirements of Scenario C differed significantly from the fatigue training requirements of the proposed rule. The required number of both initial and annual recurring fatigue training hours was substantially higher. Fatigue training was to take place in a classroom rather than through distance learning, which would result in higher costs due to the need to pay instructors, and the need to provide hotel and per diem compensation to flightcrew members receiving the fatigue training. As a result the costs are substantially higher. The FAA reviewed the recommended training requirements and decided to reduce the initial training requirements from 8 hours to 5 hours and reduce the recurrent training hours from 4 to 2 hours.

**Alternative Scenario Fatigue Training Cost Summary**

| Scenario | Nominal Cost (millions) | PV Cost (millions) |
|---|---|---|
| **Proposed Rule** | $ 262.3 | $ 167.2 |
| **Scenario C** | $ 474.2 | $ 333.7 |

The FAA seeks comments on the alternatives analysis conducted to develop this proposal. In addition, it is requesting comments on possible approaches designed to reduce the costs of this rule while maintaining or increasing the benefits.

*Regulatory Flexibility Determination and Analysis*

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposed rule would have a significant economic impact on a substantial number of small entities and therefore has performed an initial regulatory flexibility analysis as required by the RFA. The Small Business Administration small entity criterion for small air carrier operators is 1,500 or fewer employees. The FAA invites comment from affected small entities and others to aid us to make an assessment of these impacts. In particular, the FAA invites more information on the financial stability and competitive positions of small entities.

*Initial Regulatory Flexibility Analysis*

Under Section 603(b) of the RFA, the initial regulatory flexibility analysis must address:

- Description of reasons the agency is considering the action
- Statement of the legal basis and objectives for the proposed rule
- Description of the record keeping and other compliance requirements of the proposed rule
- All federal rules that may duplicate, overlap, or conflict with the proposed rule
- Description and an estimated number of small entities to which the proposed rule will apply
- Analysis of small firms' ability to afford the proposed rule
- Conduct a disproportionality analysis
- Conduct a competitive analysis
- Estimation of the potential for business closures
- Description of alternatives considered

*Reasons the Rule Is Proposed*

The objective of the proposed rule is to increase the margin of safety for passengers traveling on U.S. part 121 air carrier flights. Specifically, the FAA wants to decrease diminished flight crew performance associated with fatigue or lack of alertness brought on by the duty requirements for flightcrew members.

*The Legal Basis and Objectives*

The legal basis for the proposed rule is found in 49 U.S.C. Section 44701 *et seq.* Specifically 49 U.S.C. Section 44701 (a)(4) requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees or air carriers. Among other matters the FAA must consider as a matter of policy the maintaining and enhancing of safety in air commerce as its highest priority (49 U.S.C. Section 40101(d)).

*The Projected Reporting, Recordkeeping, and Other Compliance Requirements of this NPRM*

This proposed rule would increase reporting and recordkeeping. In addition to changes in crew schedules, there would be a minor increase in documenting crew rest.

*All Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

There are no Federal Rules that may duplicate, overlap, or conflict with the proposed rule.

*Description and an Estimated Number of Small Entities*

The proposed rule would apply to all certificate holders operating under part 121. There are 96 such operators of which 45 operators have fewer than 1,500 employees. Among these 45 operators, 25 are small entities that provide all air-cargo scheduled service competing with larger operators, code-share passenger service for large operators, and charter service.

*Affordability*

The FAA expects wide variability in cost impacts on small entity operators. The sample crew scheduling changes provide only a rough proxy for the impact on pilots' time and availability. Current crew schedules vary by operator, labor contract, and size of pilot pools. The agency understands that many smaller operators have maximized their pilot time in the cockpit and may have little flexibility with potential new flight and duty regulations. Operators needing to hire more pilots would incur the cost of hiring, wages, overhead, and training. Some captains from smaller operators could be lured away by other operators, especially the larger operators with better benefit packages. That outcome might be mitigated by the recent extension of pilots being able to work to age 65 and the inherent flexibility of the larger carriers.

The FAA requests that small entity operators provide estimated impacts of the proposed changes on their existing crew schedules. The FAA requests that all comments be accompanied by clear supporting data. For now the agency expects some small operators would likely need to hire more pilots. This increase in the demand for pilots may eventually raise pilot wages. Based on small operators who would need to hire more pilots and the resulting pressure on overall wages, there could be a significant economic impact.

*Disproportionality Analysis*

Part 121 operators would need to provide more rest for pilots which overall could result in the need to hire more pilots. The proposed changes to flight and duty time would be more difficult to accommodate for operators with small pilot staffs. While the changes to flight and duty may be measured in hours per week for operators with small, fully employed staffs, such changes can be difficult to accommodate. To be in compliance with the proposed changes small airlines may need a fraction of a new pilot's time to meet requirements. In this case, the airline would need to hire and train an additional pilot or reduce the number of operations. This added pilot would account for a larger percentage of the cost of pilots for the small airline than is likely to be the case for a major

airline. The FAA believes that this may be the case for many small operators. Moreover, the smaller the operator, the more likely this situation will occur. Thus, the proposed rule is likely to have a disproportionate economic impact on small entities.

*Competitiveness Analysis*

The competitiveness analysis examines whether a small airline is under a competitive disadvantage from the implementation of the proposed rule. This proposed rule would impose significant costs on some small entities, and as a result it is likely to worsen such entities relative competitive position.

A major criterion in a competitiveness analysis is the ability of an airline to pass on the costs imposed by the rule to their customers. The extent to which an airline can pass costs on to its customers is determined by the elasticity of demand of the service by the customer. The elasticity of demand for a product is a measure of the responsiveness to price that consumers have in their buying habits. The elasticity of demand is defined as the percentage change in quantity demanded resulting from a 1 percent change in price. If the demand for airline travel is relatively elastic, then the airlines would have less capacity to transfer the added cost of the rule to their passengers without losing significant revenue. For operators with a niche market, the demand for their services will be less elastic and more of the cost can be transferred. For instance, specialty cargo carriers have niche markets and some ability to pass on costs. Other operators would have little flexibility. In the most extreme case are operators who provide scheduled service for larger carriers generally under contract. Overall the disproportionate impact is likely to weaken small entity operators' competitive situation, but the FAA is unable to provide a measure of how much.

While the preceding discussion points out potential impacts of the proposed rule on the competitiveness of small entities, the FAA is uncertain about this impact on the level of competition within the U.S. airline industry. The FAA has very little firm-specific flight crew schedule data and route structure market data to refine this analysis and asks commenters to provide information on the impact this proposed rule would have on the continued capacity of small airlines to compete in their current markets. The FAA invites comment from affected airlines and other parties that might better inform the agency on this competitiveness issue.

*Business Closure Analysis*

Even if there is a disproportionate impact and a loss in competitive positioning does not mean a firm would have to close because of this proposed rule. While small entity operators are likely to experience a significant economic impact, changes to crew schedules are difficult to assess. Further complicating this business closure analysis are the external changes as upswings in traffic demand or declines in the price of fuel quickly improve the bottom-line.

The FAA solicits comments from the aviation community regarding the likelihood of business closure. As noted previously, the FAA requests that all comments include supporting data.

*Alternatives Considered*

In accordance with the RFA, the FAA considered alternatives to the proposed rule to mitigate or eliminate significant economic impacts on small entities.

*Alternative One*—The FAA is promulgating this rule because the status quo alternative subjects the society to an unacceptably high aviation accident risk.

*Alternative Two*—The FAA considered extending the compliance time, but again the purpose of this proposed rule is to reduce the accident risk and postponing the compliance period extends this risk.

*Alternative Three*—The FAA did consider expanding the rule to include part 135 operators. All or nearly all of these operators are small entities. As the economic impact may be more severe, the agency wants to study the impact on these operators before proposing a rulemaking.

The FAA has tentatively determined that there are no reasonable alternatives to this rulemaking that would lessen the potential impact on a substantial number of small entities. The agency seeks comment on this assessment.

*Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule contains such a mandate; therefore, the requirements of Title II apply. The alternatives considered by the FAA are discussed above in the Summary of Benefits and Costs section.

*Paperwork Reduction Act*

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

*Title:* Flightcrew Member Duty and Rest Requirements.

*Summary:* The FAA is proposing data collection from air carriers certificated under Title 14 Code of Federal Aviation Regulations (14 CFR) part 121 as prescribed in 14 CFR part 117, Flight and Duty Limitations and Rest Requirements: Flightcrew Members. Two sections in the proposal drive this requirement, 14 CFR part 117, § 117.7 Schedule Reliability and § 117.31 Operations in Unsafe Areas. In accordance with these two sections, each affected air carrier is required to submit a report to the FAA detailing:

- Schedule reliability for each air carrier ongoing reportable of 2-month intervals,
- For those air carriers conducting operations under contract for the United States Government and exceeding the proposed requirements, ongoing reportable periods of 2-month intervals, and
- For those air carriers conducting operations not under contract for the United States Government and exceeding the proposed requirements, within 14 days of each occurrence, the air carrier relied on the relief granted under § 117.31 to reposition the aircraft to a safe region.

*Use of:* Maintaining schedule reliability is a critical element to fatigue mitigation. Air carriers build flight schedules projected to meet the constraints of individual FDP. If, however, actual flight time exceeds the projected (scheduled) flight time, the validity of the air carrier's scheduling process may come into question. This proposal places accountability upon each air carrier with regard to their scheduling practices and provides a means for the FAA to oversee the reliability of the air carrier's scheduling process relative to the flightcrew members actual FDP as opposed to the flightcrew member's scheduled FDP.

The proposal defines a flight duty period as a period that begins when a flightcrew member is required to report for duty that includes a flight, a series of flights, or positioning flights, and

ends when the aircraft is parked after the last flight and there is no intention for further aircraft movement by the same flightcrew member. If the air carrier's system-wide actual FDPs exceed the scheduled flight by more than five (5) percent or any actual FDP that exceeds the pairing-specific schedule by more than twenty (20) percent, the air carrier will be required to make adjustments to its schedule factoring in the actual time exceeded in order to reflect a more realistic schedule based upon actual data. Under the proposal, each air carrier must make scheduling reliability adjustments to its schedule any time the aforementioned limitations have been exceeded. Additionally, each air carrier must submit an ongoing report on 2-month intervals detailing its overall schedule reliability and pairing-specific reliability.

This proposal provides relief for air carriers conducting operations into unsafe areas and repositioning the aircraft to another region for safety or a safe location where another crew can relieve the current crew from duty. As a result, these circumstances may result in a flightcrew member's FDP being exceeded for the day. The proposed section grants the air carrier authority to operate beyond the limits of the flightcrew's FDP to the extent of reaching a safe location where the crew must be relieved and/or go into required rest. However, by exercising such relief, the air carrier must report the occurrence to the FAA. The reporting requirements are different for air carriers operating under a contract with the United States Government and those who are not.

Air carriers under contract with the United States Government must submit a report every sixty (60) days detailing the number of times during the reporting period the air carrier relied on this relief, and for each occurrence, the reason for exceeding the FDP, the extent the FDP was exceeded and the reason the operation could not be completed consistent with part 117. If an air carrier does not rely on the proposed relief, there would be no obligation to report. If the air carrier is not under contract with the United States Government and relies on the proposed relief, it must submit a report within fourteen (14) days of each occurrence detailing the reason the FDP was exceeded, the extent the FDP was exceeded and the reason the operation could not be completed consistent with part 117.

*Respondents (including number of):* The number of likely respondents is 92. The likely respondents to this proposed information requirement are part 121 certificate holders.

*Frequency:* The FAA estimates each part 121 certificate holder will need to provide schedule reliability data every two months. Certificate holders regularly providing service to the United States government into unsafe areas may need to file reports as often as every two months. The FAA anticipates that certificate holders would only rarely need to fly into unsafe areas for reasons other than in support of U.S. government operations and estimates that fewer than five such reports would be filed each year.

*Annual Burden Estimate:*

This proposal would result in an annual recordkeeping and reporting burden as follows:

a. *Number of respondents:* 92.

*Scheduling and Schedule Reliability Reporting:* 92.

b. *Total annual responses:* 552.

(92 carriers reporting 6 times each year: $92 \times 6 = 552$)

*Scheduling and schedule reliability reporting:* 552.

1. *Percentage of these responses collected electronically:* 100%.

*Scheduling and Schedule Reliability Reporting:* 100%.

c. *Total annual hours requested:* 4,416 hours.

(92 air carriers requiring 1 employee 8 hours to complete report:

$92 \times 1 \times 8 = 4{,}416$ hours).

*Scheduling and schedule reliability reporting:* 4,416.

d. *Current OMB inventory:* 0 hours.

*Scheduling and schedule reliability reporting:* 0.

e. *Difference:* 4,416 hours.

*Scheduling and Schedule Reliability Reporting:* 4,416.

Annual reporting and recordkeeping cost burden (in thousands of dollars)

a. *Total annualized capital/startup costs:* $20,645.

Scheduling and Schedule Reliability Reporting: $15.

Fatigue Training.

Fatigue Risk Management Systems: $20,630.

b. *Total annual cost ((O&M):* $23,902.

*Scheduling and Schedule Reliability Reporting:* $482.

*Fatigue Training:* $23,420.

*Fatigue Risk Management Systems:* $0.

c. *Total annualized costs requested:* $44,547.

*Scheduling and Schedule Reliability Reporting:* $497.

*Fatigue Training:* $23,420.

*Fatigue Risk Management Systems:* $20,630.

d. *Current OMB inventory:* $0.

*Scheduling and Schedule Reliability Reporting:* $0.

*Fatigue Training:* $0.

*Fatigue Risk Management Systems:* $0.

e *Difference:* $44,547.

*Scheduling and Schedule Reliability Reporting:* $497.

*Fatigue Training:* $23,420.

*Fatigue Risk Management Systems:* $20,630.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement by November 15, 2010, and should direct them to the address listed in the Addresses section at the end of this preamble. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

*Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

*Environmental Analysis*

Environmental Analysis FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

*Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order because while a "significant regulatory action" under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*Additional Information*

*Comments Invited:*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. It also invites comments relating to the economic, environmental, energy or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the agency will consider all comments we receive on or before the closing date for comments. It will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the legal contact person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and a note is placed in the docket that the agency has received it. If the agency receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/;* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Alternatively, a copy may be requested directly from the FAA by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, are located in the docket for this rulemaking and may be viewed on the internet through the Federal eRulemaking Portal referenced in paragraph (1).

**List of Subjects**

*14 CFR Part 117*

Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety.

*14 CFR Part 121*

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

1. Part 117 is added to read as follows:

## PART 117—FLIGHT AND DUTY LIMITATIONS AND REST REQUIREMENTS: FLIGHTCREW MEMBERS

Sec.



**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46901, 44903–44904, 44912, 46105.

### § 117.1 Applicability.

This part prescribes flight and duty limitations and rest requirements for all flightcrew members and certificate holders conducting operations under part 121 of this chapter. This part also applies to all flightcrew members and part 121 certificate holders when conducting flights under part 91 of this chapter.

### § 117.3 Definitions.

In addition to the definitions in §§ 1.1 and 119.3 of this chapter, the following definitions apply to this part. In the event there is a conflict in definitions, the definitions in this part control.

*Acclimated* means a condition in which a crewmember has been in a theater for 72 hours or has been given at least 36 consecutive hours free from duty.

*Airport/standby reserve* means a defined duty period during which a crewmember is required by a certificate holder to be at, or in close proximity to, an airport for a possible assignment.

*Augmented flightcrew* means a flightcrew that has more than the

minimum number of flightcrew members required by the airplane type certificate to operate the aircraft to allow a flightcrew member to be replaced by another qualified flightcrew member for in-flight rest.

*Calendar day* means a 24-hour period from 0000 through 2359.

*Certificate holder* means a person who holds or is required to hold an air carrier certificate or operating certificate issued under part 119 of this chapter.

*Crew pairing* means a flight duty period or series of flight duty periods assigned to a flightcrew member which originate or terminate at the flightcrew member's home base.

*Deadhead transportation* means transportation of a crewmember as a passenger, by air or surface transportation, as required by a certificate holder, excluding transportation to or from a suitable accommodation.

*Duty* means any task, other than long-call reserve, that a crewmember performs on behalf of the certificate holder, including but not limited to airport/standby reserve, short-call reserve, flight duty, pre- and post-flight duties, administrative work, training, deadhead transportation, aircraft positioning on the ground, aircraft loading, and aircraft servicing.

*Duty period* means a period that begins when a certificate holder requires a crewmember to report for duty and ends when that crew member is free from all duties.

*Fatigue* means a physiological state of reduced mental or physical performance capability resulting from lack of sleep or increased physical activity that can reduce a crewmember's alertness and ability to safely operate an aircraft or perform safety-related duties.

*Fatigue risk management system* (FRMS) means a management system for an operator to use to mitigate the effects of fatigue in its particular operations. It is a data-driven process and a systematic method used to continuously monitor and manage safety risks associated with fatigue-related error.

*Fit for duty* means physiologically and mentally prepared and capable of performing assigned duties in flight with the highest degree of safety.

*Flight duty period* (FDP) means a period that begins when a flightcrew member is required to report for duty with the intention of conducting a flight, a series of flights, or positioning or ferrying flights, and ends when the aircraft is parked after the last flight and there is no intention for further aircraft movement by the same flightcrew member. A flight duty period includes deadhead transportation before a flight segment without an intervening required rest period, training conducted in an aircraft, flight simulator or flight training device, and airport/standby reserve.

*Home base* means the location designated by a certificate holder where a crew member normally begins and ends his or her duty periods.

*Lineholder* means a flightcrew member who has a flight schedule and is not acting as a reserve flightcrew member.

*Long-call reserve* means a reserve period in which a crewmember receives a required rest period following notification by the certificate holder to report for duty.

*Physiological night's rest* means the rest that encompasses the hours of 0100 and 0700 at the crewmember's home base, unless the individual has acclimated to a different theater. If the crewmember has acclimated, the rest must encompass the hours of 0100 and 0700 at the acclimated location.

*Report time* means the time that the certificate holder requires a crewmember to report for a duty period.

*Reserve availability period* means a duty period during which a certificate holder requires a reserve crewmember on short call reserve to be available to receive an assignment for a flight duty period.

*Reserve duty period* means the time from the beginning of the reserve availability period to the end of an assigned flight duty period, and is applicable only to short call reserve.

*Reserve flightcrew member* means a flightcrew member who a certificate holder requires to be available to receive an assignment for duty.

*Rest facility* means a bunk, seat, room, or other accommodation that provides a crewmember with a sleep opportunity.

(1) *Class 1 rest facility* means a bunk or other surface that allows for a flat sleeping position and is located separate from both the flight deck and passenger cabin in an area that is temperature-controlled, allows the crewmember to control light, and provides isolation from noise and disturbance.

(2) *Class 2 rest facility* means a seat in an aircraft cabin that allows for a flat or near flat sleeping position; is separated from passengers by a minimum of a curtain to provide darkness and some sound mitigation; and is reasonably free from disturbance by passengers or crewmembers.

(3) *Class 3 rest facility* means a seat in an aircraft cabin or flight deck that reclines at least 40 degrees and provides leg and foot support.

*Rest period* means a continuous period determined prospectively during which the crewmember is free from all restraint by the certificate holder, including freedom from present responsibility for work should the occasion arise.

*Scheduled* means times assigned by a certificate holder when a crewmember is required to report for duty.

*Schedule reliability* means the accuracy of the length of a scheduled flight duty period as compared to the actual flight duty period.

*Short-call reserve* means a period of time in which a crewmember does not receive a required rest period following notification by the certificate holder to report for a flight duty period.

*Split duty* means a flight duty period that has a scheduled break in duty that is less than a required rest period.

*Suitable accommodation* means a temperature-controlled facility with sound mitigation that provides a crewmember with the ability to sleep in a bed and to control light.

*Theater* means a geographical area where local time at the crewmember's flight duty period departure point and arrival point differ by no more than 4 hours.

*Unforeseen operational circumstance* means an unplanned event beyond the control of a certificate holder of insufficient duration to allow for adjustments to schedules, including unforecast weather, equipment malfunction, or air traffic delay.

*Window of circadian low* means a period of maximum sleepiness that occurs between 0200 and 0559 during a physiological night.

**§ 117.5 Fitness for duty.**

(a) Each flightcrew member must report for any flight duty period rested and prepared to perform his or her assigned duties.

(b) No certificate holder may assign and no flightcrew member may accept assignment to a flight duty period if the flightcrew member has reported for a flight duty period too fatigued to safely perform his or her assigned duties or if the certificate holder believes that the flightcrew member is too fatigued to safely perform his or her assigned duties.

(c) No certificate holder may permit a flightcrew member to continue a flight duty period if the flightcrew member has reported himself too fatigued to continue the assigned flight duty period.

(d) Any person who suspects a flightcrew member of being too fatigued to perform his or her duties during flight must immediately report that information to the certificate holder.

(e) Once notified of possible flightcrew member fatigue, the

certificate holder must evaluate the flightcrew member for fitness for duty. The evaluation must be conducted by a person trained in accordance with § 117.11 and must be completed before the flightcrew member begins or continues an FDP.

(f) As part of the dispatch or flight release, as applicable, each flightcrew member must affirmatively state he or she is fit for duty prior to commencing flight.

(g) Each certificate holder must develop and implement an internal evaluation and audit program approved by the Administrator that will monitor whether flightcrew members are reporting for FDPs fit for duty and correct any deficiencies.

**§ 117.7 Fatigue risk management system.**

(a) No certificate holder may exceed any provision of this part unless approved by the FAA under a Fatigue Risk Management System that provides at least an equivalent level of protection against fatigue-related accidents or incidents as the other provisions of this part.

(b) The Fatigue Risk Management System must include:

(1) A fatigue risk management policy.

(2) An education and awareness training program.

(3) A fatigue reporting system.

(4) A system for monitoring flightcrew fatigue.

(5) An incident reporting process.

(6) A performance evaluation.

(c) Whenever the Administrator finds that revisions are necessary for the continued adequacy of an FRMS that has been granted final approval, the certificate holder must, after notification, make any changes in the program deemed necessary by the Administrator.

**§ 117.9 Schedule reliability.**

(a) Each certificate holder must adjust within 60 days —

(1) Its system-wide flight duty periods if the total actual flight duty periods exceed the scheduled flight duty periods more than 5 percent of the time, and

(2) Any scheduled flight duty period that is shown to actually exceed the schedule 20 percent of the time.

(b) Each certificate holder must submit a report detailing the scheduling reliability adjustments required in paragraph (a) of this section to the FAA every two months detailing both overall schedule reliability and pairing-specific reliability. Submissions must consist of:

(1) The carrier's entire crew pairing schedule for the previous 2-month period, including the total anticipated length of each set of crew pairings and the regulatory limit on such pairings;

(2) The actual length of each set of crew pairings, and

(3) The percentage of discrepancy between the two data sets on both a cumulative, and a pairing-specific basis.

**§ 117.11 Fatigue education and training program.**

(a) Each certificate holder must develop and implement an education and training program, approved by the Administrator, applicable to all employees of the certificate holder responsible for administering the provisions of this rule including flightcrew members, dispatchers, individuals involved in the scheduling of flightcrew members, individuals involved in operational control, and any employee providing management oversight of those areas.

(b)(1) Initial training for all individuals listed in paragraph (a) of this section must consist of at least 5 programmed hours of instruction in the subjects listed in paragraph (b)(3) of this section.

(2) Recurrent training for all individuals listed in paragraph (a) of this section must be given on an annual basis and must consist of 2 programmed hours of instruction in the subjects listed in paragraph (b)(3) of this section.

(3) The fatigue education and training program must include information on—

(i) FAA regulatory requirements for flight, duty and rest and NTSB recommendations on fatigue management.

(ii) Basics of fatigue, including sleep fundamentals and circadian rhythms.

(iii) Causes of fatigue, including possible medical conditions.

(iv) Effect of fatigue on performance.

(v) Fatigue countermeasures.

(vi) Fatigue prevention and mitigation.

(vii) Influence of lifestyle, including nutrition, exercise, and family life, on fatigue.

(viii) Familiarity with sleep disorders and their possible treatments.

(ix) Responsible commuting.

(x) Flightcrew member responsibility for ensuring adequate rest and fitness for duty.

(xi) Operating through and within multiple time zones.

(c) Whenever the Administrator finds that revisions are necessary for the continued adequacy of a fatigue education and training program that has been granted final approval, the certificate holder must, after notification, make any changes in the program that are deemed necessary by the Administrator.

**§ 117.13 Flight time limitation.**

No certificate holder may schedule and no flightcrew member may accept an assignment or continue an assigned flight duty period if the total flight time:

(a) Will exceed the limits specified in Table A of this part if the operation is conducted with the minimum required flightcrew.

(b) Will exceed 16 hours if the operation is conducted with an augmented flightcrew.

**§ 117.15 Flight duty period: Un-augmented operations.**

(a) Except as provided for in § 117.17, no certificate holder may assign and no flightcrew member may accept an assignment for an unaugmented flight operation if the scheduled flight duty period will exceed the limits in Table B of this part.

(b) If the flightcrew member is not acclimated:

(1) The maximum flight duty period in Table B of this part is reduced by 30 minutes.

(2) The applicable flight duty period is based on the local time at the flightcrew member's home base.

(c) In the event unforeseen circumstances arise:

(1) The pilot in command and certificate holder may extend a flight duty period up to 2 hours.

(2) An extension in the flight duty period exceeding 30 minutes may occur only once in any 168 consecutive hour period, and never on consecutive days.

**§ 117.17 Flight duty period: Split duty.**

For a split duty period, a certificate holder may extend and a flightcrew member may accept a flight duty period up to 50 percent of time that the flightcrew member spent in a suitable accommodation up to a maximum flight duty period of 12 hours provided the flightcrew member is given a minimum opportunity to rest in a suitable accommodation of 4 hours, measured from the time the flightcrew member reaches the rest facility.

**§ 117.19 Flight duty period: Augmented flightcrew.**

The flight duty period limits in § 117.15 may be extended by augmenting the flightcrew.

(a) For flight operations conducted with an acclimated augmented flightcrew, no certificate holder may assign and no flightcrew member may accept an assignment if the scheduled flight duty period will exceed the limits specified in Table C of this part.

(b) If the flightcrew member is not acclimated:

(1) The maximum flight duty period in Table C of this part is reduced by 30 minutes.

(2) The applicable flight duty period is based on the local time at the flightcrew member's home base.

(c) No certificate holder may assign and no flightcrew member may accept an assignment under this section unless during the flight duty period:

(1) Two consecutive hours are available for in-flight rest for the flightcrew member manipulating the controls during landing;

(2) A ninety minute consecutive period is available for in-flight rest for each flightcrew member; and

(3) The last flight segment provides an opportunity for in-flight rest in accordance with paragraph (c)(1) of this section.

(d) No certificate holder may assign and no flightcrew member may accept an assignment involving more than three flight segments under this section unless the certificate holder has an approved fatigue risk management system under § 117.7.

(e) At all times during flight, at least one flightcrew member with a PIC type-rating must be alert and on the flight deck.

(f) In the event unforeseen circumstances arise:

(1) The pilot in command and certificate holder may extend a flight duty period up to 3 hours.

(2) An extension in the flight duty period exceeding 30 minutes may occur only once in any 168 consecutive hour period.

**§ 117.21 Reserve status.**

(a) Unless specifically designated otherwise by the certificate holder, all reserve is considered long-call reserve.

(b) For airport/standby reserve, all time spent in a reserve status is part of the flightcrew member's flight duty period.

(c) For short call reserve,

(1) All time within the reserve availability period is duty.

(2) The reserve availability period may not exceed 14 hours.

(3) No certificate holder may schedule and no reserve flightcrew member on short call reserve may accept an assignment of a flight duty period that begins before the flightcrew member's next reserve availability period unless the flightcrew member is given at least 14 hours rest.

(4) The maximum reserve duty period for un-augmented operations is the lesser of—

(i) 16 hours, as measured from the beginning of the reserve availability period;

(ii) The assigned flight duty period, as measured from the start of the flight duty period; or

(iii) The flight duty period in Table B of this part plus 4 hours, as measured from the beginning of the reserve availability period.

(iv) If all or a portion of a reserve flightcrew member's reserve availability period falls between 0000 and 0600, the certificate holder may increase the maximum reserve duty period in paragraph (c)(4)(iii) of this section by one-half of the length of the time during the reserve availability period in which the certificate holder did not contact the flightcrew member, not to exceed 3 hours.

(5) The maximum reserve duty period for augmented operations is the lesser of—

(i) The assigned flight duty period, as measured from the start of the flight duty period; or

(ii) The flight duty period in Table C of this part plus 4 hours, as measured from the beginning of the reserve availability period.

(iii) If all or a portion of a reserve flightcrew member's reserve availability period falls between 0000 and 0600, the certificate holder may increase the maximum reserve duty period in paragraph (c)(5)(ii) of this section by one-half of the length of the time during the reserve availability period in which the certificate holder did not contact the flightcrew member, not to exceed 3 hours.

(d) For long call reserve,

(1) The period of time that the flightcrew member is in a reserve status does not count as duty.

(2) If a certificate holder contacts a flightcrew member to assign him or her to a flight duty period or a short call reserve, the flightcrew member must receive the required rest period specified in § 117.25 prior to reporting for the flight duty period or commencing the short call reserve duty.

(3) If a certificate holder contacts a flightcrew member to assign him or her to a flight duty period that will begin before and operate into the flightcrew member's window of circadian low, the flightcrew member must receive a 12 hour notice of report time from the air carrier.

(e) An air carrier may shift a reserve flightcrew member's reserve availability period under the following conditions:

(1) A shift to a later reserve availability period may not exceed 12 hours.

(2) A shift to an earlier reserve availability period may not exceed 5 hours, unless the shift is into the flightcrew member's window of circadian low, in which case the shift may not exceed 3 hours.

(3) A shift to an earlier reserve period may not occur on any consecutive calendar days.

(4) The total shifts in a reserve availability period in paragraphs (e)(1) through (e)(3) of this section may not exceed a total of 12 hours in any 168 consecutive hours.

**§ 117.23 Cumulative duty limitations.**

(a) The limitations of this section on flightcrew members apply to all commercial flying by the flightcrew member during the applicable periods.

(b) No certificate holder may schedule and no flightcrew member may accept an assignment if the flightcrew member's total flight time will exceed the following:

(1) 100 hours in any 28 consecutive calendar day period and

(2) 1,000 hours in any 365 consecutive calendar day period.

(c) No certificate holder may schedule and no flightcrew member may accept an assignment if the flightcrew member's total Flight Duty Period will exceed:

(1) 60 flight duty period hours in any 168 consecutive hours and

(2) 190 flight duty period hours in any 672 consecutive hours.

(d) Except as provided for in paragraph (d)(3) of this section, no certificate holder may schedule and no flightcrew member may accept an assignment if the flightcrew member's total duty period will exceed:

(1) 65 duty hours in any 168 consecutive hours and

(2) 200 duty hours in any 672 consecutive hours.

(3) If a flightcrew member is assigned to short-call reserve or a certificate holder transports a flightcrew member in deadhead transportation in, at a minimum, a seat in aircraft cabin that allows for a flat or near flat sleeping position, the total duty period may not exceed:

(i) 75 duty hours in any 168 consecutive hours and

(ii) 215 duty hours in any 672 consecutive hours.

(4) Extension of the duty period under paragraph (d)(3) of this section is limited to the amount of time spent on short-call reserve or in deadhead transportation.

**§ 117.25 Rest period.**

(a) No certificate holder may assign and no flightcrew member may accept assignment to any reserve or duty with the certificate holder during any required rest period.

(b) Before beginning any reserve or flight duty period, a flightcrew member

must be given at least 30 consecutive hours free from all duty in any 168 consecutive hour period, except that:

(1) If a flightcrew member crosses more than four time zones during a series of flight duty periods that exceed 168 consecutive hours, the flightcrew member must be given a minimum of three physiological nights rest upon return to home base.

(2) A flightcrew member operating in a new theater must receive 36 hours of consecutive rest in any 168 consecutive hour period.

(c) No certificate holder may reduce a rest period more than once in any 168 consecutive hour period.

(d) No certificate holder may schedule and no flightcrew member may accept an assignment for reserve or a flight duty period unless the flightcrew member is given a rest period of at least 9 consecutive hours before beginning the reserve or flight duty period measured from the time the flightcrew member reaches the hotel or other suitable accommodation.

(e) In the event of unforeseen circumstances, the pilot in command and certificate holder may reduce the 9 consecutive hour rest period in paragraph (d) of this section to 8 consecutive hours.

**§ 117.27 Consecutive nighttime operations.**

No certificate holder may schedule and no flightcrew member may accept more than three consecutive nighttime flight duty periods unless the certificate holder provides an opportunity to rest during the flight duty period in accordance with § 117.17.

**§ 117.29 Deadhead transportation.**

(a) All time spent in deadhead transportation is considered part of a duty period.

(b) Time spent in deadhead transportation is considered part of a flight duty period if it occurs before a flight segment without an intervening required rest period.

(c) Time spent entirely in deadhead transportation during a duty period may not exceed the flight duty period in Table B of this part for the applicable time of start plus 2 hours unless the flightcrew member is given a rest period equal to the length of the deadhead transportation but not less than the required rest in § 117.25 upon completion of such transportation.

**§ 117.31 Operations into unsafe areas.**

(a) This section applies to operations that cannot otherwise be conducted under this part because of unique circumstances that could prevent flightcrew members from being relieved by another crew or safely provided with the rest required under § 117.25 at the end of the applicable flight duty period.

(b) A certificate holder may exceed the maximum applicable flight duty periods to the extent necessary to allow the flightcrew to fly to a destination where they can safely be relieved from duty by another flightcrew or can receive the requisite amount of rest prior to commencing their next flight duty period.

(c) The flightcrew shall be given a rest period immediately after reaching the destination described in paragraph (b) of this section equal to the length of the actual flight duty period or 24 hours, whichever is less.

(d) No extension of the cumulative fatigue limitations in § 117.3 is permitted.

(e) If the operation was conducted under contract with an agency or department of the United States Government, each affected air carrier must submit a report every 60 days detailing the—

(1) Number of times in the reporting period it relied on this section to conduct its operations.

(2) For each occurrence,

(i) The reasons for exceeding the applicable flight duty period;

(ii) The extent to which the applicable flight duty period was exceeded; and

(iii) The reason the operation could not be completed consistent with the requirements of this part.

(f) If the operation was not conducted under contract with an agency or Department of the United States Government, each affected air carrier must submit a report within 14 days of each occurrence detailing—

(1) The reasons for exceeding the applicable flight duty period;

(2) The extent to which the applicable flight duty period was exceeded; and

(3) The reason the operation could not be completed consistent with the requirements of this part.

(g) Should the Administrator determine that a certificate holder is relying on the provisions on this section, the Administrator may require the certificate holder to develop and implement a fatigue risk management system.

TABLE A TO PART 117—MAXIMUM FLIGHT TIME LIMITS FOR UNAUGMENTED OPERATIONS

| Time of start (Home base) | Maximum flight time (hours) |
|---|---|
| 0000–0459 | 8 |
| 0500–0659 | 9 |
| 0700–1259 | 10 |
| 1300–1959 | 9 |
| 2000–2359 | 8 |

TABLE B TO PART 117—FLIGHT DUTY PERIOD: UNAUGMENTED OPERATIONS

| Time of start (Home base or acclimated) | Maximum flight duty period (hours) for lineholders based on number of flight segments | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7+ |
| 0000–0359 | 9 | 9 | 9 | 9. | 9 | 9 | 9 |
| 0400–0459 | 10 | 10 | 9 | 9 | 9 | 9 | 9 |
| 0500–0559 | 11 | 11 | 11 | 11 | 10 | 9.5 | 9 |
| 0600–0659 | 12 | 12 | 12 | 12 | 11.5 | 11 | 10.5 |
| 0700–1259 | 13 | 13 | 13 | 13 | 12.5 | 12 | 11 |
| 1300–1659 | 12 | 12 | 12 | 12 | 11.5 | 11 | 10.5 |
| 1700–2159 | 11 | 11 | 10 | 10 | 9.5 | 9 | 9 |
| 2200–2259 | 10.5 | 10.5 | 9.5 | 9.5 | 9 | 9 | 9 |

TABLE B TO PART 117—FLIGHT DUTY PERIOD: UNAUGMENTED OPERATIONS—Continued

| Time of start (Home base or acclimated) | Maximum flight duty period (hours) for lineholders based on number of flight segments | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7+ |
| 2300–2359 | 9.5 | 9.5 | 9 | 9 | 9 | 9 | 9 |

TABLE C TO PART 117—FLIGHT DUTY PERIOD: AUGMENTED OPERATIONS

| Time of start (local time) | Maximum flight duty period (hours) based on rest facility and number of pilots | | | | | |
|---|---|---|---|---|---|---|
| | Class 1 rest facility | | Class 2 rest facility | | Class 3 rest facility | |
| | 3 Pilots | 4 Pilots | 3 Pilots | 4 Pilots | 3 Pilots | 4 Pilots |
| 0000–0559 | 14 | 16 | 13 | 14.5 | 12 | 12.5 |
| 0600–0659 | 15 | 17.5 | 14 | 15.5 | 13 | 13.5 |
| 0700–1259 | 16 | 18 | 15.5 | 17 | 14 | 14.5 |
| 1300–1659 | 15 | 17.5 | 14 | 15.5 | 13 | 13.5 |
| 1700–2359 | 14 | 16 | 13 | 14.5 | 12 | 12.5 |

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

2. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46901, 44903–44904, 44912, 46105.

### Subpart Q [Removed and Reserved]

3. Remove and reserve subpart Q, consisting of §§ 121.470 and 121.471.

### Subpart R [Removed and Reserved]

4. Remove and reserve subpart R, consisting of §§ 121.480 through 121.493.

### Subpart S [Removed and Reserved]

5. Remove and reserve subpart S, consisting of §§ 121.500 through 121.525.

Issued in Washington, DC on September 3, 2010.

**Raymond Towles,**

*Acting Director, Flight Standards Service, Aviation Safety.*

[FR Doc. 2010–22626 Filed 9–10–10; 4:15 pm]

BILLING CODE 4910–13–P


Federal Register

**Tuesday,**

**September 14, 2010**

## Part III

# Federal Housing Finance Agency

**12 CFR Parts 1249 and 1282**

**2010–2011 Enterprise Housing Goals; Enterprise Book-entry Procedures; Final Rule**

## FEDERAL HOUSING FINANCE AGENCY

**12 CFR Parts 1249, 1282**

**RIN 2590–AA26**

## 2010–2011 Enterprise Housing Goals; Enterprise Book-entry Procedures

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule.

**SUMMARY:** Section 1128(b) of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to provide for the establishment, monitoring and enforcement of new housing goals effective for 2010 and 2011 for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). Section 1332(a) of the Safety and Soundness Act, as amended by HERA, requires the Federal Housing Finance Agency (FHFA) to establish three single-family owner-occupied purchase money mortgage goals and one single-family refinancing mortgage goal. Section 1333(a) of the Safety and Soundness Act requires FHFA to establish one multifamily special affordable housing goal, as well as providing for a multifamily special affordable housing subgoal. This final rule establishes new housing goals for 2010 and 2011, consistent with the Safety and Soundness Act, as amended. The final rule also revises and updates the rules for counting mortgages for purposes of the housing goals to ensure clarity and consistency with the new goals. In addition, the final rule includes provisions regarding reporting requirements and book-entry procedures.

**DATES:** This rule is effective October 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Nelson Hernandez, Senior Associate Director, Housing Mission and Goals, Office of Housing and Community Investment, (202) 408–2819, Brian Doherty, Manager, Housing Mission and Goals, Office of Housing and Community Investment, (202) 408–2991, Paul Manchester, Principal Economist, Housing Mission and Goals, Office of Housing and Community Investment, (202) 408–2946, Sharon Like, Managing Associate General Counsel, Office of General Counsel, (202) 414–8950, Kevin Sheehan, Attorney, Office of General Counsel, (202) 414–8952 or Lyn Abrams, Attorney, Office of General Counsel, (202) 414–8951. These are not toll-free numbers. The mailing address for each contact is: Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Establishment of FHFA*

Effective July 30, 2008, HERA amended the Safety and Soundness Act to create FHFA as an independent agency of the federal government.[1] HERA transferred the safety and soundness supervisory and oversight responsibilities over the Enterprises from the Office of Federal Housing Enterprise Oversight (OFHEO) to FHFA. HERA also transferred the charter compliance authority and responsibility to establish, monitor and enforce the affordable housing goals for the Enterprises from the Department of Housing and Urban Development (HUD) to FHFA. FHFA is responsible for ensuring that the Enterprises operate in a safe and sound manner, including maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities.[2]

Section 1302 of HERA provides, in part, that all regulations, orders and determinations issued by the Secretary of HUD (Secretary) with respect to the Secretary's authority under the Safety and Soundness Act, the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act (together, the Charter Acts), shall remain in effect and be enforceable by the Secretary or the Director of FHFA, as the case may be, until modified, terminated, set aside or superseded by the Secretary or the Director, any court, or operation of law. The Enterprises continue to operate under regulations promulgated by OFHEO and HUD until FHFA issues its own regulations.[3] The Enterprises are government-sponsored enterprises (GSEs) chartered by Congress for the purpose of establishing secondary market facilities for residential mortgages.[4] Specifically, Congress established the Enterprises to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages, and promote access to mortgage credit throughout the nation.[5]

### *B. Statutory and Regulatory Background*

Prior to HERA, the Safety and Soundness Act provided the Secretary of HUD with specific authority to establish, monitor and enforce affordable housing goals for the Enterprises.[6] HUD issued regulations establishing affordable housing goals for the Enterprises, which were periodically updated, most recently in 2004, when HUD established new housing goal levels for 2005 through 2008.[7] HUD's regulations provided for the housing goal levels for 2008 to continue in effect in 2009 and each year thereafter until replaced by new annual housing goals established by HUD.[8] In August 2009, FHFA issued a final rule that adopted many of the existing housing goals provisions in a new part 1282 of title 12 of the Code of Federal Regulations. As authorized by section 1331(c) of the Safety and Soundness Act, as amended, the final rule also revised the levels of the existing affordable housing goals in light of current market conditions.[9]

The Safety and Soundness Act, as amended by HERA, requires the Director of FHFA to establish new housing goals effective for 2010 and beyond. The new housing goals include four goals for single-family, owner-occupied housing, one multifamily special affordable housing goal, and one multifamily special affordable housing subgoal.[10] The single-family housing goals target purchase money mortgages for low-income families, families that reside in low-income areas, and very low-income families, and refinancing mortgages for low-income families.[11] The multifamily special affordable housing goal targets multifamily housing affordable to low-income families, and the multifamily special affordable housing subgoal targets multifamily housing affordable to very low-income families.[12]

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[1] *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, § 1101, Public Law 110–289, 122 Stat. 2654 (2008), codified at 12 U.S.C. 4501 *et seq.*

[2] *See* 12 U.S.C. 4513.

[3] *See* HERA at section 1302, 122 Stat. 2795.

[4] *See* 12 U.S.C. 1716 *et seq.;* 12 U.S.C. 1451 *et seq.*

[5] *Id.*

[6] *See* 12 U.S.C. 4561 *et seq.* (2008).

[7] *See* 24 CFR part 81 (2008).

[8] *See* 24 CFR 81.12 through 81.14 (2008).

[9] *See* 74 FR 39873 (Aug. 10, 2009).

[10] *See* 12 U.S.C. 4561 and 4563(a)(2).

[11] *See* 12 U.S.C. 4562.

[12] *See* 12 U.S.C. 4563.

*C. Conservatorship*

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises in accordance with the Safety and Soundness Act, as amended by HERA, to maintain the Enterprises in a safe and sound financial condition. The Enterprises remain under conservatorship at this time.

Although the Enterprises' substantial market presence has been a key step to restoring market stability, neither company would be capable of serving the mortgage market today without the ongoing financial support provided by the U.S. Department of Treasury. Fannie Mae has drawn $85.1 billion and Freddie Mac has drawn $63.1 billion in Treasury support under the Senior Preferred Stock Purchase Agreements, over $148 billion in total. Under the terms of the Senior Preferred Stock Purchase Agreements, the Enterprises will be shrinking their retained mortgage portfolio by ten percent per year. The Administration has announced its intention to develop and present to Congress a plan for the future of the nation's housing finance system that will include a proposal for the ultimate resolution of the Enterprises in conservatorship. Administration and congressional leadership have each pointed to the coming year as likely to see action affecting the Enterprises' future form and function. While reliance on the Treasury Department's backing will continue until legislation produces a final resolution to the Enterprises' future, FHFA is monitoring the activities of the Enterprises to: (a) Limit their risk and exposure by avoiding new lines of business; (b) ensure profitability in the new book of business without deterring market participation or hindering market recovery; and (c) minimize losses on the mortgages already on their books.

**II. Proposed Rule**

On February 26, 2010, FHFA published in the **Federal Register** a proposed rule to establish new housing goals for the Enterprises. The 45-day comment period closed April 12, 2010. *See* 75 FR 9034 (Feb. 26, 2010). FHFA received a total of 29 comment letters on the proposed rule. Eight of the comment letters were from real estate professionals and addressed seller concessions in real estate transactions, an issue that is not applicable to this rulemaking. The remaining 21 comment letters were from 11 trade associations, two not-for-profit organizations, two policy advocacy groups, one corporation, one government entity, one financial research organization, one individual, and both Enterprises.

In the proposed rule, FHFA proposed measuring the Enterprises' single-family performance against specified benchmark levels and against the primary mortgage market. FHFA received 11 comment letters on this proposal, all in support of the two-part approach. Most of the trade associations, as well as the Enterprises, recognized the difficulty of forecasting the mortgage market in the current economic environment and were receptive to the alternative measurements.

Seven commenters supported the proposed benchmark levels for the single-family home purchase goals. These commenters also supported the new separate low-income families refinancing goal. The Enterprises did not object to the mortgage purchase goal levels, but were concerned that the low-income refinancing goal was set too high. One trade association stated that the mortgage purchase goal levels were set at only 50 to 60 percent of Enterprise purchases in 2008 and should be higher.

The multifamily housing goal levels were supported generally by four commenters, although two commenters noted that the multifamily market may be difficult to measure. Eight commenters did not support the multifamily housing goal levels. Six commenters stated that the goal levels were too low, and that the Enterprises should be required to provide more assistance to the multifamily market. On the other hand, the Enterprises commented that demand for multifamily financing is too weak to support the proposed goal levels, and that they should be set lower.

The proposed rule invited comment on whether there should be housing goals established for mortgages secured by small multifamily properties, in addition to reporting requirements. Five commenters supported the proposed reporting requirements, and urged FHFA to also establish small multifamily housing goals. The commenters stated that the small multifamily market is an underserved market segment, and assistance is needed in smaller communities. Three commenters, including both Enterprises, stated that reporting on small multifamily properties was appropriate, but they discouraged a small multifamily housing goal at this time given the state of the multifamily market and the financial condition of the Enterprises.

Eight commenters addressed the proposed standards for exclusion of certain mortgage purchases from counting toward achievement of the housing goals. Five commenters were in favor of excluding private label securities from the housing goals, although Freddie Mac favored inclusion if due diligence is conducted. A few other commenters suggested the use of Regulation Z and the Home Ownership and Equity Protection Act (HOEPA) rather than interagency guidance to determine goals eligibility. Commenters also suggested that FHFA explicitly exclude from the housing goals mortgages with other characteristics such as low teaser rates, interest-only options, negative amortization, reduced documentation, and second liens. One commenter expressed support for the provision that allows FHFA discretion to enumerate additional unacceptable terms and conditions that constitute unacceptable mortgages.

FHFA has considered all of the comments on the proposed rule and has determined to adopt a final rule that makes certain revisions to the proposed rule, as described in detail below. Comments that raised issues beyond the scope of the proposed rule are not addressed in this final rule, but may be considered by FHFA at a future date.

**III. Summary of Final Rule**

*A. Modification of Housing Goal Structure*

The final rule modifies the structure of the housing goals in accordance with HERA's revisions to the Safety and Soundness Act. HUD established overall housing goals for 2005–2008 that combined an Enterprise's purchases of mortgages on single-family housing, multifamily housing, purchase money mortgages, and refinancing mortgages. FHFA adjusted the levels of these overall goals for 2009. These goals are revised for 2010 and 2011 to include four separate goals and one subgoal for purchases of single-family mortgages and one goal and one subgoal for purchases of multifamily mortgages. To carry out the requirements of HERA regarding designated disaster areas while continuing to provide a focus on low-income and high minority concentration census tracts, the final rule establishes both a low-income areas home purchase goal and subgoal. As in the proposed rule, the final rule provides for a retrospective, market-based assessment of the achievement by the Enterprises of their housing goals as well as the traditional prospective, benchmark goals approach. These changes are described in more detail below.

*B. Adjustment of Home Purchase and Refinancing Goal Levels, and Multifamily Goal and Subgoal Levels*

Consistent with the proposed rule, the final rule provides that Enterprise goal performance under each of the single-family housing goals shall be measured using a fraction of qualifying mortgage purchases as a percent of total mortgage purchases. Neither the numerator nor the denominator includes Enterprise transactions or activities that are not mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1282.16(b). The final rule establishes separate single-family goals for home purchase mortgages and refinancing mortgages. This differs from previous treatment, which combined Enterprise purchases of home purchase and refinancing mortgages for the overall goals.

Consistent with the proposed rule, the final rule bases the 2010–2011 multifamily goals on the numbers of affordable dwelling units financed, rather than specifying such goals in minimum dollar terms. The special affordable multifamily subgoal in effect prior to 2010 applied to purchases of mortgages on housing for families with incomes below 60 percent of area median income (AMI) and for families with incomes between 60 percent and 80 percent of AMI living in low-income areas. The overall multifamily goal for 2010–2011 is somewhat broader in its coverage than the previous special affordable multifamily goal, applying to mortgages on housing for families with incomes no greater than 80 percent of AMI, regardless of location. However, the 2010–2011 very low-income multifamily subgoal is targeted to households with significantly lower incomes. The qualifying household income for purposes of the 2010–2011 multifamily subgoal is at or below 50 percent of AMI.

Consistent with the proposed rule, the final rule provides that the 2010–2011 low-income home purchase and refinancing goals target households with lower incomes than the previous low- and moderate-income goal. The previous low- and moderate-income goal included families with incomes at or below 100 percent of AMI. Under the final rule, the low-income home purchase goal and refinancing goal include only families with incomes no greater than 80 percent of AMI.

Consistent with the proposed rule, the final rule provides that the 2010–2011 low-income areas home purchase goal includes families in census tracts with incomes up to 80 percent of AMI, while the previous underserved areas home purchase subgoal included families in census tracts with incomes up to 90 percent of AMI.

Although this final rule establishing the new housing goals is effective in mid-2010, FHFA will evaluate performance under the housing goals established for 2010 on a calendar year basis.

*C. New Counting Requirements*

In accordance with HERA, and consistent with the proposed rule, the final rule counts only conventional loans for purposes of the single-family housing goals. This means that certain Federal Housing Administration (FHA) loans that previously counted toward the goals, such as Home Equity Conversion Mortgages (HECMs), will no longer be counted. Second liens, which also counted toward the goals in the past, will now be excluded from counting for purposes of the single-family and multifamily housing goals.

Consistent with the proposed rule, the final rule provides that mortgages financing rental units in investor-owned single-family properties, which were previously included in the goals, are no longer counted for purposes of the housing goals. Rental units in 2–4 unit owner-occupied single-family properties will continue to be counted. However, FHFA will continue to monitor the Enterprises' purchases of such mortgages with regard to rental units in both 2–4 unit owner-occupied housing and investor-owned 1–4 unit rental housing.

## IV. Analysis of Final Rule

*A. Definitions—§ 1282.1*

As in the proposed rule, the final rule includes a number of technical amendments to conform the definitions to the statutory definitions in the Safety and Soundness Act, as amended by HERA.

Consistent with the proposed rule, § 1282.1 of the final rule removes a number of definitions that were used in regulatory provisions that were revised or eliminated based on HERA's amendments of the Safety and Soundness Act. Specifically, § 1282.1 of the final rule no longer includes definitions for "central city," "ECOA," "government-sponsored enterprise, or GSE," "home purchase mortgage," "New England," "ongoing program," "other underserved area," "owner-occupied unit," "portfolio of loans," "real estate mortgage investment conduit (REMIC)," "rural area," "underserved area," and "wholesale exchange."

As in the proposed rule, § 1282.1 of the final rule adds new definitions of "extremely low-income," "low-income," and "moderate-income," and revises the income levels in the definition of "very low-income." The final rule also replaces the definition of "low-income area" with a new definition for "families in low-income areas." Each of these definitions is revised to be substantially the same as the corresponding definition in section 1303 of the Safety and Soundness Act, as amended by HERA.[13]

Consistent with the proposed rule, § 1282.1 of the final rule adds new definitions for "borrower income," "FEMA," "HMDA," "minority census tract," "mortgage revenue bond," "non-metropolitan area," "owner-occupied housing," "private label security," and "purchase money mortgage." The new definitions are intended to reflect common usage and provide certainty in interpreting the terms as used in new and existing regulatory provisions.

The definition of "contract rent," consistent with the proposed rule, is revised to make clear that the market rent for similar units in the neighborhood, as used by the lender or appraiser in underwriting a property, may be used as the anticipated rent for unoccupied units. As in the proposed rule, the final rule adds language to the definition of "utilities" clarifying that charges for cable or telephone service shall not be included. In addition, the final rule adopts the proposed clarification that Metropolitan Divisions are included in the definition of "metropolitan area" to facilitate comparisons with census and HMDA information. As in the proposed rule, the final rule removes unnecessary references to the form of payment from the definition of "mortgage purchase."

Consistent with the proposed rule, the final rule removes the definition of "refinancing" and incorporates those provisions in a new definition of "refinancing mortgage." The final rule also provides for the exclusion of most workout agreements from the definition of "refinancing." The proposed rule omitted this provision to avoid confusion over whether a transaction should be treated as a loan modification or a refinancing. The final rule includes the provision to maintain consistency with the prior definition of "refinancing" under the housing goals.

*Mortgage.* Consistent with the proposed rule, the final rule removes personal property (chattel) loans on manufactured housing from the definition of "mortgage," with the result that such purchases would not qualify for credit under the housing goals.

[13] 12 U.S.C. 4502.

Two trade associations, both for the manufactured housing industry, maintained that the Enterprises should be more active in the area of personal property loans. One commented that Enterprise purchases of these loans provide much-needed liquidity to lenders, lower borrowing costs, and ensure the continued availability of this form of affordable housing. The other commented that the unavailability of purchase-money financing effectively discriminates against manufactured homes and consumers, and also contravenes federal housing policy contained in the Manufactured Housing Improvement Act of 2000.

The final rule does not revise the proposed definition of "mortgage" to include personal property loans on manufactured housing. The Enterprises have minimal experience with chattel financing, and the high level of defaults related to such financing creates significant credit and operational risks. The depreciation in the value of the manufactured home could result in greater loss to the Enterprise in the event of default on the loan. The role of the Enterprises in the market for personal property loans on manufactured housing is the subject of FHFA final rulemaking on the duty to serve requirements of HERA. FHFA may revise the definition of "mortgage" in future rulemaking to ensure conformance with the final regulation on duty to serve. Until that time, purchases of personal property loans on manufactured housing will not be counted as mortgage purchases for purposes of the housing goals.

*Mortgage with unacceptable terms or conditions.* Consistent with the proposed rule, the final rule removes the definitions for "mortgages contrary to good lending practices" and "mortgages with unacceptable terms or conditions or resulting from unacceptable practices," and revises and consolidates their substantive provisions into a single new definition of "mortgage with unacceptable terms or conditions." The definition of "mortgage with unacceptable terms or conditions" includes a new provision regarding mortgages with annual percentage rates (APRs) above a certain level. The new provision is intended to cover mortgages that were formerly included in the definition of "HOEPA mortgage." The definition of "HOEPA mortgage" is revised to conform FHFA's definition to the coverage in HOEPA itself. The provision in the definition of "mortgage with unacceptable terms or conditions" relating to a borrower's ability to pay is replaced with a provision incorporating interagency guidance on nontraditional and subprime mortgages. This change is intended to cover similar types of mortgages while providing greater consistency between the provisions of the housing goals and other regulatory provisions.

FHFA received several comments on the proposed definition of "mortgages with unacceptable terms or conditions," both supporting and opposing particular terms or conditions. One commenter noted that the definition does not explicitly exclude subprime loans. One trade association objected to the inclusion of prepaid single-premium credit life insurance products, and recommended that the rule specifically allow mortgages where the insurance premiums are calculated and paid on a monthly basis and are not financed by the lender. Another trade association commented that FHFA should strengthen the terms and conditions that constitute unacceptable mortgages, and recommended the use of Regulation Z and HOEPA rather than interagency guidance. A policy advocacy group supported requiring the Enterprises to follow interagency guidance, but noted that the current regulatory guidance may not be sufficient. This commenter cautioned that FHFA should not surrender its independent authority to restrict the Enterprises from engaging in abusive and unsafe lending practices. One trade association supported the provision that allows FHFA to determine other additional unacceptable terms and conditions because markets and abusive practices evolve. Fannie Mae noted that its single-family underwriting guidelines are already consistent with the interagency guidance.

In the final rule, the definition of "mortgages with unacceptable terms or conditions" does not explicitly exclude all subprime loans, but loans with any of the listed terms or conditions are excluded from counting towards the goals. Mortgages with prepaid single-premium credit life insurance products, for example, which have adverse effects on borrowers, continue to be excluded from counting, as they have in the past. While the final rule specifically references interagency guidance on subprime and nontraditional loans, FHFA expects the Enterprises to ensure that mortgage loans they acquire comply with Regulation Z and HOEPA, as well as any federal law related to minimum standards for mortgages and predatory lending. While compliance with these and other applicable laws is expected, FHFA retains its independent authority to restrict the Enterprises from engaging in abusive and unsafe lending practices. Accordingly, as markets and abusive practices evolve, FHFA may determine additional terms and conditions to be unacceptable.

*Families in low-income areas.* Consistent with the proposed rule, the new definition of "families in low-income areas" in the final rule includes families with incomes at or below 100 percent of AMI who reside in "designated disaster areas." The proposed rule defined "designated disaster areas" as areas at the census tract level and included only census tracts in counties approved for individual assistance within the declared major disaster area where the average real property damage severity, as reported by the Federal Emergency Management Agency (FEMA), exceeds $1,000 per household for that census tract.

Fannie Mae commented that the rule language should reflect the Community Reinvestment Act (CRA) criteria for designated disaster areas. For purposes of complying with the CRA, regulators have determined that "[e]xaminers will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended." [14]

In response to this comment and to ensure efficiency in implementation, the final rule draws on the CRA criteria for designated disaster areas. Section 1282.1 of the final rule provides that a designated disaster area will include (1) any county designated by the federal government as adversely affected by a declared major disaster under FEMA's administration, (2) where individual assistance payments were authorized by FEMA. Section 1282.12(e) of the final rule establishes an overall low-income areas goal that includes families in low-income census tracts, moderate-income families in minority census tracts, and moderate-income families in designated disaster areas. Section 1282.12(f) of the final rule also establishes a low-income areas subgoal that includes only families in low-income census tracts and moderate-income families in minority census tracts. Both the overall goal and the subgoal include a benchmark level and a market-based assessment. The

[14] The Department of the Treasury, the Federal Reserve Board and the Federal Deposit Insurance Corporation, *Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice,* 74 FR 509 (Jan. 6, 2009).

benchmark levels for both the overall goal and the subgoal are set based on a market analysis that is similar to the analysis that was used for the proposed rule. The benchmark level for the subgoal is set at 13 percent. The benchmark level for the overall goal will be set annually by FHFA notice based on the subgoal benchmark level plus an amount that reflects the impact of designated disaster areas in the most recent year for which data is available. The market-based assessment for both the overall goal and the subgoal will use the designated disaster areas from the year for which performance is measured, as will the measurement of the Enterprises' performance each year.

To accommodate the Enterprises' business planning requirements, for purposes of the low-income areas housing goal, the final rule, consistent with the proposed rule, treats a designated disaster area as effective beginning on the January 1 after the FEMA designation of the county and continuing through December 31 of the third full calendar year following the FEMA designation. If data is available in a particular case to support treatment as a designated disaster area from an earlier date or for a longer period of time, FHFA may provide for such treatment by notice to the Enterprises.

*B. Housing Goals—§§ 1282.11 through 1282.13*

As required by sections 1331(a) and 1333(a)(2) of the Safety and Soundness Act, as amended by HERA, and consistent with the proposed rule, this subpart of the final rule establishes, for 2010 and 2011, four single-family housing goals, one single-family housing subgoal, one multifamily special affordable housing goal, and one multifamily special affordable housing subgoal. As under the proposed rule, the single-family housing goals in the final rule are based both on the benchmark levels and on an evaluation of the Enterprise's performance relative to the market for each housing goal in each year. Section 1282.11(b) requires the Director to establish housing goals for a particular year by December 1st of the previous year.[15]

1. Prospective and Market-Based Approach

As discussed in the proposed rule, following passage of the Safety and Soundness Act, HUD established housing goals for Fannie Mae and Freddie Mac in October 1993,[16] and revised and expanded those goals in 1995,[17] 2000,[18] and 2004.[19] Multi-year goals were established in the 1993 housing goals rule for 1993–94 (subsequently extended to 1995), in the 1994 housing goals rule for 1996–99 (with the goal levels for 1999 continuing in effect for 2000), in the 2000 housing goals rule for 2001–03 (with the goal levels for 2003 continuing in effect for 2004), and in the 2004 housing goals rule for 2005–08.[20]

In each case, the numerical goals were established up to four years in advance. The goals were set as specific minimum goal-qualifying percentages of all dwelling units financed by mortgages acquired by each Enterprise in a given year, except for the special affordable multifamily subgoal, which was set as a minimum dollar volume for purchases of goal-qualifying loans. In the 2004 final rule, HUD added three single-family home purchase subgoals, which were similarly established as specific minimum goal-qualifying percentages of all home purchase mortgages financed by the Enterprises on owner-occupied properties in metropolitan statistical areas (MSAs).

HUD set the goals for 1993–2008 based on the six factors as specified in the Safety and Soundness Act. The most important factors were past performance on the goals and, especially for the home purchase subgoals, HUD's estimates of the goal-qualifying shares of home purchase mortgages in the primary mortgage market on properties in MSAs. For the overall goals, HUD's estimates of the goal-qualifying shares of all dwelling units financed in the primary market by the Enterprises in each year were also important. For example, HUD estimated that low- and moderate-income units would account for 50–55 percent of all units financed in the primary mortgage market for 2003–04, and 51–56 percent of all units financed in 2005–08. The low- and moderate-income goal was set at 50 percent for 2003–04, and was later established to increase in accordance with the market range over the 2005–08 period—specifically, 52 percent for 2005, 53 percent for 2006, 55 percent for 2007, and 56 percent for 2008. A similar approach was followed with regard to the overall underserved areas and special affordable goals for 2005–08.

As recent market developments show, it can be difficult to forecast the goal-qualifying shares of the primary mortgage market several years in advance. The forecasts developed by HUD were based on the assumption of a "home purchase market environment," a market environment in which purchase mortgages dominate over refinancing mortgages. However, when market conditions result in higher than average refinance activity, the actual market goal-qualifying shares can be significantly different from the forecast because the actual refinance share would dominate. A second reason for the divergence between forecasted and actual shares of goal-qualifying units in the primary mortgage market is the variation in the affordability of housing, such as measured by the National Association of Realtors (NAR) housing affordability index. If the price of a product or service declines, it is more affordable to the consumer. In this respect, housing is no different from any other product. A third reason for divergence is the variance in the size of the multifamily mortgage market over time. Under the previous goals counting regime, multifamily units played a significant role in whether an Enterprise met the goals. A fourth reason for the divergence is the change in the size of the share of the mortgage market accounted for by Federal Housing Administration (FHA) and Department of Veterans Affairs (VA) mortgages. As discussed below, the market share of mortgages insured by FHA increased dramatically in recent years.

As measured after the fact, HUD's market estimates often differed significantly from the actual goal-qualifying shares of the primary market. Specifically, the actual low- and moderate-income share of the primary market in 2003 was 53 percent, which was within HUD's 2001–2003 forecasted range of 50–55 percent, but when the share increased to 58 percent for 2004, it exceeded the upper end of the range. The low- and moderate-income share of the primary market remained high, at 57 percent for 2005, above HUD's 2005–2008 forecasted range of 51–56 percent, but then decreased to 55 percent for 2006 and 52 percent for 2007. Thus, over the 2005–2007 period, the low- and moderate-income goals increased steadily, while the low- and moderate-income share of the primary mortgage market decreased steadily.

While the Enterprises are in conservatorship, FHFA expects the Enterprises to continue to fulfill their core statutory purposes, including their support for affordable housing. The housing goals are one set of measures of that support. FHFA does not intend for the Enterprises to undertake uneconomic or high-risk activities in support of the goals. However, the fact

[15] *See* 12 U.S.C. 4561(b).

[16] *See* 58 FR 53048 (Oct. 13, 1993) and 58 FR 53072 (Oct. 13, 1993).

[17] *See* 60 FR 61846 (Dec. 1, 1995).

[18] *See* 65 FR 65044 (Oct. 31, 2000).

[19] *See* 69 FR 63580 (Nov. 2, 2004).

[20] *See* 75 FR 9034–9036 (Feb. 26, 2010).

that the Enterprises are in conservatorship should not be a justification for withdrawing support from these market segments. While in conservatorship the Enterprises have tightened their underwriting standards to avoid poor quality mortgages that may have contributed to their losses. Maintaining sound underwriting discipline going forward is important for conserving the Enterprises' assets and for supporting their mission in a manner in which the achievement of housing goals directly relates to actual market conditions.

In light of these circumstances and the difficulties in anticipating market deviations from the normal home purchase environment in the traditional approach to goal-setting, the final rule adopts the approach in the proposed rule to measure the Enterprises' single-family goal performance relative to benchmark levels for the goal-qualifying shares of the Enterprises' mortgage purchases, as well as relative to the *actual* goal-qualifying shares of the primary mortgage market. A dual approach prevents exclusive reliance on multi-year mortgage market forecasts. The primary disadvantage of this approach is that information on the goal-qualifying shares of the current single-family primary market is not available until the release of HMDA data in late summer of the following year, approximately nine months after the rating period. However, FHFA believes that this market-based approach is an appropriate measure of mission achievement under the housing goals, especially while the Enterprises are operating in conservatorship, and that the overall advantages of this approach outweigh the disadvantages.

FHFA received 11 comments on the proposal to calculate goals performance based on the eligible market share and the benchmark level. All 11 commenters supported this approach. One trade association cautioned that FHFA should carefully reassess this approach for accuracy after actual data is available to compare with forecasts. A policy advocacy group agreed with the proposed approach, and stated that it would help FHFA more effectively match Enterprise performance to actual market conditions. This commenter added that the benchmark should be considered the floor. Fannie Mae supported the proposed approach, but expressed concern about the time delay between submission of goals performance data and the availability of HMDA data, which could cause regulatory uncertainty. Regarding § 1282.11(b), one commenter stated that setting the housing goals annually, based upon the most recent data, would be an improvement over the HUD projection of five or so years into the future.

Nine commenters supported the proposed single-family housing goal benchmark levels. One policy advocacy group commented that the goals are an improvement over previous years because they target the same populations as the CRA. This commenter also supported the inclusion of minorities in the low-income areas housing goal. Both Enterprises commented that the proposed purchase money mortgage goal benchmark levels were reasonable. One trade association opposed the proposed single-family housing goal benchmark levels, stating that the proposed levels would be 50 to 60 percent of Enterprise purchases in 2008, which the commenter believed is too low to realize HERA's objectives.

Two commenters specifically supported the separate refinancing housing goal. One trade association commented that a separate refinancing goal is important because of the cyclical nature of refinancing. The other commenter stated that refinance volume can vary, from less than the volume of home purchase mortgages to over three times the volume of home purchase mortgages, depending upon interest rates, which makes a combined goal unworkable. The Enterprises did not oppose the separate refinancing housing goal, but stated that the proposed refinancing housing goal benchmark level was too high. Fannie Mae noted that non-HAMP (Home Affordable Modification Program) loan modifications are not goal-eligible, and there is also a reluctance to refinance when the labor market is weak. Freddie Mac commented that the current low interest rate environment is not favorable for a high share of low-income qualifying refinance mortgages.

As in the proposed rule, the final rule establishes single-family housing goals that include (1) an assessment of Enterprise performance as compared to the actual share of the market that meets the criteria for each goal, and (2) a benchmark level to measure Enterprise performance. The benchmark levels for performance are intended to provide greater certainty for the Enterprises in establishing strategies for meeting the housing goals. An Enterprise would fail to meet a housing goal if its annual performance fell below both the benchmark level and the actual share of the market that met the criteria for a particular housing goal for that year. An Enterprise would not fail to meet a goal if it achieved the benchmark level for that goal, even if the actual market size for the year was higher than the benchmark level. In order to plan their operations, the Enterprises must be able to rely on the benchmark levels that FHFA has set.[21]

This approach to setting the goals, involving both the setting of a prospective target and an assessment of actual market opportunity, is a departure from the approach used by HUD and FHFA in the past. FHFA has determined that this approach is appropriate because of the difficulties of predicting the market, especially in light of recent market turmoil and the difficulty of making accurate projections even in more stable economic environments. This approach is consistent with Congressional intent, as Congress authorized FHFA to establish the goal levels for the Enterprises. In addition, several provisions of the Safety and Soundness Act, as amended, authorize the Director to set or adjust the goal levels in light of changing market conditions. These provisions include: the requirement that FHFA calculate the preceding three-year average percentages of goal-eligible originations for each goal category, and take that information into account in setting the single-family goals;[22] the authority to adjust previously established goal levels based on current market conditions;[23] the authority to adjust goal levels in response to a petition by an Enterprise based, in part, on market conditions and the risk of "over-investment";[24] and relief from enforcement if the goal levels are determined to be infeasible.[25]

FHFA will carefully assess the approach of using both prospective targets and assessments of actual market opportunity for accuracy after actual data is available to compare with forecasts. The benchmark level, however, will not be considered the floor in assessing whether an Enterprise achieved a particular housing goal. The time delay between submission of goals performance data and the availability of HMDA data, while not optimal, is also unavoidable for this market-based approach.

FHFA notes that because HERA mandates separate single-family home purchase and refinance low-income goals, each goal level is set individually, based on projected market conditions.

[21] *See* 12 U.S.C. 4561(b), acknowledging "the need for the enterprises to reasonably and sufficiently plan their operations and activities in advance, including operations and activities necessary to meet such annual goals."

[22] 12 U.S.C. 4562(e)(2)(A).

[23] 12 U.S.C. 4562(e)(3).

[24] 12 U.S.C. 4564(b)(1), (2).

[25] 12 U.S.C. 4566(b).

Prior to HERA, the home purchase and refinance components of the income-based goals (both the low- and moderate-income and the special affordable goals) provided cumulative effects toward the overall goal, including a cumulative impact from the Enterprises' multifamily acquisitions. This is no longer the case under the separate HERA single-family home purchase and refinance low-income goals.

2. Retrospective Measurement of the Market

Consistent with the proposed rule, § 1282.12(b) of the final rule sets forth specific criteria for determining the size of the market based on HMDA data. This retrospective measurement of the size of the market will be used to evaluate the performance of each Enterprise on each single-family housing goal. The specific criteria for establishing the size of the market reflect the types of mortgages that are counted for purposes of the housing goals and that are typically eligible for purchase by an Enterprise. The retrospective measurement of the size of the market is defined under the limitations of HMDA data. The market includes only originations of conventional conforming first-lien non-HOEPA single-family mortgages on owner-occupied properties. Only home purchase mortgages are included in the market estimates for the three home purchase mortgage goals and the home purchase mortgage subgoal, and only refinance mortgages are included in the market estimates for the refinance mortgage goal. Mortgages with rate spreads of 150 basis points or more above the applicable Average Prime Offer Rate (APOR) reported in HMDA would be excluded, as would mortgages that are missing information that would be necessary to determine the appropriate counting treatment under the housing goals. Additional details regarding the housing goals are discussed above, along with the factors considered by FHFA in establishing the housing goals.

FHFA received five comments on the proposed criteria for establishing the size of the market. One commenter from the manufactured housing sector noted that many manufactured housing loans are personal property loans for affordable housing, and questioned the prudence of excluding higher interest rate loans (300 basis points over prime) from the market size. One trade association urged FHFA to make public its goal calculation methodology as technical guidance, and expressed concerns that excluding FHA and other government loans from the market calculation would distort the market measurement. Another trade association was concerned that tighter underwriting standards and lower loan-to-value requirements were not fully factored into the market size. Another commenter stated that FHFA's monthly survey of single-family mortgage originations will provide a more timely and in-depth addition to HMDA data. Freddie Mac recommended that the definition of higher-priced loan used to establish market size conform to the definition set by the Federal Reserve Board, which is 150 basis points or more above APOR for first loans.

To the extent possible, the market estimates are based on the universe of goal-eligible mortgages. Manufactured housing loans that are not higher-cost loans are included in the market estimates, to the extent that they are included in the HMDA data. Manufactured housing loans make up two percent of the single-family originations reported in the HMDA data, and approximately 60 percent of those manufactured housing loans are higher-cost loans, which FHFA is using as a proxy for personal property loans, not eligible for goals credit under this rule. FHFA also determined that subprime loans should not be included in the market estimates. Therefore, the final rule excludes higher-priced loans (150 basis points or more above APOR) as a proxy for subprime loans. Because most government-insured mortgages are ineligible under HERA to qualify for the housing goals, FHA and other government loans are not included in the market estimates.

3. Sustainable Mortgages

The proposed rule requested comments on an alternative to defining the market for determining whether a mortgage is eligible to count toward the housing goals that would focus on the sustainability of the mortgage. Under this approach, the housing goals would be defined in such a way that only mortgages that support sustainable homeownership would count toward the goals. This would require a standard to differentiate between mortgages that are sustainable and mortgages that are not likely to be sustainable.

Four commenters supported an alternative discussed in the proposed rule that would use historical data on the cumulative default rate (CDR) of mortgages acquired by the Enterprises for defining the sustainable mortgage market, while one commenter opposed this approach. A trade association urged deferral of the use of CDR until final Congressional and regulatory action on risk retention and the exemption of certain qualified mortgages from the risk retention requirements. A policy advocacy group favored the use of CDR to define the market, but cautioned that the use of particular features to define a market would be useful only to the extent the models are reliable and reflect likely market conditions over some length of time. A trade association favored the use of CDR. Both Enterprises supported the use of CDR to define the market, but expressed reservations. Fannie Mae stated that its systems already filter out loans with the most risk, and given the considerations that must go into determining whether a loan is sustainable, it stated that it would be difficult to develop a system that appropriately removes unsustainable loans from the market sizing analysis. Freddie Mac stated that the use of CDR should help FHFA and the Enterprises align and maintain appropriate balance between affordability, sustainability, and safety and soundness, but cautioned that any methodology to develop market share estimates must be aligned with the proprietary models used by the Enterprises so that inconsistency can be avoided.

FHFA has considered the comments on this alternative approach to determining whether a mortgage is eligible to count toward the housing goals. Because the sustainable mortgage approach raises multiple policy and technical issues that require further consideration, the final rule does not implement this approach. FHFA may solicit further public comments regarding a sustainable mortgage approach toward the housing goals in the future.

4. Monthly Mortgage Survey

As described in the proposed rulemaking, FHFA is conducting a monthly survey of single-family mortgage originations pursuant to section 1324(c) of the Safety and Soundness Act, as amended by HERA, and will make data collected under that survey available to the public. Release of that data will provide additional information on home mortgage lending activity. FHFA will use the survey data in its monitoring of Enterprise housing goals performance.

*C. Analysis of Factors for Single-Family Housing Goals*

Section 1332(e)(2) of the Safety and Soundness Act, as amended by HERA, requires FHFA to consider the following seven factors in setting the single-family housing goals:

(1) National housing needs;

(2) Economic, housing, and demographic conditions, including expected market developments;

(3) The performance and effort of the Enterprises toward achieving the housing goals under this section in previous years;

(4) The ability of the Enterprise to lead the industry in making mortgage credit available;

(5) Such other reliable mortgage data as may be available;

(6) The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and

(7) The need to maintain the sound financial condition of the Enterprises.[26]

FHFA's consideration of the size of the market for each housing goal includes consideration of the percentage of goal-qualifying mortgages under each housing goal, as calculated based on HMDA data for the three most recent years for which data is available.[27] FHFA's analysis of each of the factors, which has been updated since the proposed rulemaking, is set forth below.

1. National Housing Needs

With the collapse of subprime and Alt-A lending, tighter credit conditions, and stricter underwriting standards, single-family mortgage originations fell 38 percent in 2008. The Enterprises' share of single-family mortgage-backed securities (MBS) issuance rose to over 73 percent in that year, however, and the credit risk characteristics of their purchases began to improve. In 2009, the Enterprises' mortgage purchase and guarantee activity represented more than 76 percent of conforming single-family originations. Falling house prices caused equity in homes to decline sharply. The resetting of interest rates on poorly underwritten adjustable rate mortgages (ARMs) originated in recent years, deteriorating household balance sheets, rising unemployment, continued credit tightening, and the deepening recession contributed to increases in mortgage delinquency and home foreclosure rates as well as sharply lower housing starts and sales. Continued tightening in lender credit policies, large inventories of unsold homes, significant volumes of homes in foreclosure, rising unemployment, and increasing pessimism among potential homebuyers combined to drive home prices down further.

Despite improving housing affordability, the U.S. homeownership rate declined since peaking at an average rate of 69 percent in 2004. In the second quarter of 2010, the homeownership rate was 66.9 percent, down from 67.4 percent in the second quarter of 2009. The homeownership rate for Black households in the second quarter of 2010 was 46.2 percent, down from 46.5 percent in the second quarter of 2009. The homeownership rate for Hispanic households in the second quarter of 2010 was 47.8 percent, down from 48.1 percent in the second quarter of 2009.[28]

In 2008, the most recent year in which HMDA data is publicly available, applications from Black borrowers fell by 48 percent, and applications from Hispanic borrowers fell by 55 percent.[29] One of the key catalysts of the current economic crisis was falling housing prices after the substantial increase that began in 2000. From January 2000 through the May 2006 peak, the S&P/Case-Shiller Home Price Index rose by approximately 105 percent, only to fall dramatically since then. The less volatile FHFA House Price Index, which reflects the book of business of the Enterprises, peaked later and also showed a decline.

Changes in mortgage underwriting, particularly for affordable products, had a direct impact on the national housing market. During the boom, as house price appreciation reduced affordability, low documentation Alt-A loans, interest-only loans and ARMs proliferated. Subprime market share tripled to more than 20 percent of the market. Lenders accepted more loans with higher loan-to-value (LTV) ratios and lower borrower credit scores. The Joint Center for Housing Studies report, "State of the Nation's Housing 2009," describes the effect of loosened mortgage underwriting standards on the housing market. According to that report, in 2005, a household with median owner income of about $57,000 and spending 28 percent of income on mortgage principal and interest could qualify for a 30-year, fixed-rate loan of $225,000. If the same borrower took out an ARM loan at a discounted interest rate, the maximum loan amount increased to $265,000. By adding an interest-only feature to that ARM and qualifying the household based on the initial interest-only payments, the potential loan size grew to $356,000. Allowing the borrower to spend 38 percent of income on mortgage costs meant that the mortgage loan could total approximately $482,000. Interagency regulatory guidance on nontraditional and subprime loans issued in 2006 and 2007, including guidance to the Enterprises by OFHEO, contributed to limiting the numbers of such loans as underwriting standards were subsequently strengthened.[30]

With the decline in house prices over the 2007–2009 period and historically low mortgage interest rates, new homebuyers encountered a much more affordable housing market in 2009 and continue to do so in 2010. As measured by the National Association of Realtors' composite housing affordability index, which reports the ratio of median household income to the income that would be required to buy a median-priced home (where 100 indicates the exact amount of income required to buy a median-priced home), affordability continued to increase in 2009. That index rose from 166.3 in December 2008 to 171.5 one year later. The higher value of the index mainly reflected the decline in the median price of existing single-family homes and lower mortgage interest rates. The index dipped to 158.9 in June 2010 as a result of an increase in the median price of existing single-family homes between December 2009 and June 2010, but affordability is still at a very high level by historical standards.

2. Economic, Housing and Demographic Conditions

The current turmoil in the housing and mortgage markets has created less than favorable conditions for expansions in credit to borrowers on the margins of homeownership. The adverse market conditions include: (1) Tightened credit underwriting practices; (2) sharply increased standards of private mortgage insurance (MI)

[26] 12 U.S.C. 4562(e)(2).

[27] *See* 12 U.S.C. 4562(e)(2)(A).

[28] U.S. Census Bureau, "Residential Vacancies and Homeownership in the Second Quarter 2010," tables 4 and 7, July 27, 2010.

[29] "HMDA Data Show Huge Decline in 2008 Mortgage Activity—Except at Government Insured Programs." *Inside Mortgage Finance.* Oct. 2, 2009 at 8.

[30] *See* Office of Federal Housing Enterprise Oversight, "OFHEO Director James B. Lockhart Commends Enterprises on Implementation of Subprime Mortgage Lending Guidance," News Release (Sept. 10, 2007), available at *http://www.fhfa.gov/webfiles/1608/LockhartcommendsENTERPRISEsreSubprime91007.pdf. See also* Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, *Statement on Subprime Mortgage Lending*, 72 FR 37569–37575 (July 10, 2007); and Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, *Interagency Guidance on Nontraditional Mortgage Product Risks*, 71 FR 58609–58618 (Oct. 4, 2006).

companies; (3) increased role of FHA in the marketplace; (4) collapse of the private label mortgage-backed securities (PLS) market; and (5) high unemployment. These developments contribute to a decrease in the overall number of single-family loans likely to qualify for housing goals credit.

*Tightened credit underwriting practices.* In general, more conservative underwriting standards in the mortgage market will likely result in fewer goal-qualifying loans and a lower percentage of goal-qualifying loans in the market. Underwriting standards in the mortgage market generally, and at Fannie Mae and Freddie Mac, have tightened considerably in response to declining market conditions and early payment defaults, among other factors, and such standards can be expected to remain in place in the near future. In May 2008, responding to changes in private MI underwriting, Fannie Mae revised its down payment policy to lower the maximum allowable LTV ratio for loans underwritten by Desktop Underwriter (DU) and for manually underwritten loans. The implementation of Fannie Mae's updated DU Version 8.0, effective in December 2009, generally reduces the allowable "back-end" borrower debt-to-income ratio—the portion of a borrower's income that goes toward paying debts—to 45 percent. In addition, it eliminates DU recommendations for Expanded Approval II and Expanded Approval III loans, loans which historically counted heavily toward the housing goals.[31] If the DU 8.0 revisions had been in effect for all of 2009, substantially fewer goal-qualifying loans would have been underwritten. The changes to DU will likely have a similar effect in 2010 and 2011. Freddie Mac has similarly tightened its underwriting standards.

Mortgage underwriting standards in the near term at the Enterprises will be decidedly more conservative than earlier in the decade. During the first quarter of 2010, for example, less than two percent of Fannie Mae's purchases were interest-only loans, and Freddie Mac purchased none. Similarly, Alt-A loans were less than one percent of acquisitions for both Enterprises. This is significant because interest-only loans previously purchased by the Enterprises have serious delinquency rates of more than 18 percent, and Alt-A loans have serious delinquency rates of more than 12 percent. During the first quarter of 2010, Alt-A loans already on the books were responsible for 37 percent of Fannie Mae's losses for the quarter and 42 percent of Freddie Mac's losses for the quarter. Due to the Enterprises' focus on improved purchase quality and underwriting standards, the loans that the Enterprises have purchased since conservatorship in late 2008 have had much lower rates of serious delinquency. Serious delinquencies for 2009 were a fraction of the serious delinquency rates for the 2006–2008 vintages for comparable periods after origination.[32]

*Sharply increased standards of private mortgage insurers.* Much like tighter credit underwriting standards generally, higher underwriting standards of private MI providers have resulted in fewer goal-qualifying loans and a lower percentage of goal-qualifying loans in the market. As a result of stress in the mortgage markets, beginning in late 2007, private MI providers implemented major changes in the types of risk they were able to insure. Insurers that had experienced substantial ratings downgrades acted to minimize losses by imposing stricter underwriting standards on loans with high LTVs and implementing measures in "declining markets" that have sharply limited the insurability of certain higher-LTV mortgage loans.

As with the Enterprises, the steps taken by mortgage insurers to strengthen their financial condition, while necessary to improving mortgage sustainability, may reduce the overall mortgage lending volume, particularly for higher-LTV mortgages, which historically have tended to be more likely to count for purposes of the housing goals.

*Increased role of FHA in the marketplace.* Another factor that has had substantial marketplace impact is the increase in the share of mortgages insured by FHA and mortgages guaranteed by the VA. These loans generally are pooled into mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMA). Purchases of mortgages insured by FHA and mortgages guaranteed by the VA ordinarily have not received goals credit in the past and will not generally receive credit going forward. In general, the impact of the FHA market on the percentage of loans in the conventional market that qualify for a particular goal depends on: (1) The goal-qualifying size of the overall market; (2) the share of the market accounted for by FHA mortgages; and (3) the extent to which FHA mortgages have goal-qualifying characteristics.

The market share of mortgages insured by FHA and mortgages guaranteed by the VA has risen dramatically. Loans insured by FHA increased to 21 percent of single-family mortgages insured in 2009, up from 17 percent in 2008, spurred by the continuation of favorable lending programs. VA's share of originations also increased, rising to 4 percent in 2009. Both types of mortgages backed by the federal government accounted for a combined 25 percent of single-family originations in 2009, up from just 4 percent two years earlier.[33] A key reason for this growth is that Fannie Mae and Freddie Mac generally cannot buy loans with original LTV ratios greater than 80 percent without some form of credit enhancement. Borrowers without substantial down payments are increasingly utilizing government insurance and guaranty programs. Nearly 80 percent of FHA's purchase-loan borrowers in 2009 were first-time homebuyers.[34] To ensure long-term actuarial soundness, FHA announced several policy changes on January 20, 2010 that could reduce borrower eligibility for FHA, including: (1) Reducing the maximum permissible seller concession from the current six percent to three percent, which is in line with marketplace norms; (2) requiring a minimum credit score of 580 for new borrowers seeking to qualify for the 3.5 percent down payment program; and (3) increasing the up-front mortgage insurance premium by 50 basis points, to 2.25 percent. In addition, FHA asked for a change in the law to allow it the ability to increase the maximum annual mortgage insurance premium.[35]

Legislative changes which exempt FHA, VA and Rural Housing Service loans from certain risk retention requirements could have the effect of increasing the loan volume for these federally-insured and guaranteed mortgages.[36]

*Collapse of private label securities market.* In the middle part of the decade—the period covered by the prior HUD rule on the housing goals—Fannie Mae and Freddie Mac were major

[31] Desktop Originator/Desktop Underwriter Release Notes. DU Version 8.0. DODU 0909. Fannie Mae. Sept. 22, 2009. DU 8.0 will allow a back-end ratio of up to 50 percent for case files with strong compensating factors.

[32] Statement of Edward J. DeMarco, Acting Director, Federal Housing Finance Agency, House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises. May 26, 2010 at 3.

[33] "Report to Congress 2009." Federal Housing Finance Agency at 10.

[34] "HUD Secretary, FHA Commissioner Report on FHA's Finances." HUD Press Release No. 09–214. Nov. 12, 2009.

[35] "FHA Announces Policy Changes to Address Risk and Strengthen Finances." HUD Press Release No. 10–016. Jan. 20, 2010.

[36] "Free Pass on Risk Retention Could Boost FHA Loan Volume." American Banker, June 28, 2010.

purchasers of the AAA-rated tranches of PLS that contained substantial amounts of subprime mortgages. While the size and nature of the Enterprises' subprime holdings differed, these purchases had an impact on the achievement of the housing goals for each Enterprise, particularly for the home purchase subgoals. Such loans were not a large factor in the mortgage marketplace in 2008 or 2009. OFHEO provided guidance to the Enterprises in 2007 incorporating interagency policy guidance from the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board and the National Credit Union Administration. The guidance restricted the purchase of such securities by the Enterprises when certain terms of mortgages backing those securities are harmful to the borrower.[37]

At year-end 2009, Freddie Mac's $175.6 billion private label MBS and commercial MBS portfolio reflected deteriorating credit performance. Although substantially all of these securities were rated triple-A at purchase, $84.2 billion were rated below investment grade at year-end 2009. In the same year, Fannie Mae's $89.8 billion private label MBS, commercial MBS and mortgage revenue bond portfolios also reflected deteriorating credit performance. Although almost all of these securities were rated triple-A at purchase, $42.2 billion were rated below investment grade at year-end 2009.

*Unemployment.* Unemployment and underemployment have an effect on mortgage default rates, and on the number of borrowers seeking and obtaining a purchase money mortgage or a refinance mortgage. The civilian unemployment rate was 9.5 percent in June and July 2010, down from 9.7 percent in May 2010 and a high of 10.1 percent in October 2009.[38] However, the unemployment rate is still historically high and will likely remain above eight percent in the 2010 to 2011 period. To the extent that lower-income jobs are affected more by unemployment than higher-income jobs, the affordable home purchase market is affected.

NeighborWorks, a national network of community-based organizations actively involved in foreclosure mitigation counseling, has estimated that the two leading causes of mortgage default rates as of January 31, 2010 were a reduction in income (37 percent of defaults) and loss of income (21 percent of defaults).[39] The high rates of unemployment and underemployment are likely to continue to have a significant impact on the size of the mortgage market going forward.

*Refinancings.* Refinancing volumes are strongly influenced by mortgage interest rates and LTV ratios on existing mortgages. Under the umbrella of the Administration's Making Home Affordable program, the Home Affordable Refinance Program (HARP) is an effort by the Enterprises to enhance the opportunity for owners to refinance. Under this program, homeowners whose mortgages are owned or guaranteed by Fannie Mae or Freddie Mac who are current on their mortgages have the opportunity to reduce their monthly mortgage payments to take advantage of low monthly mortgage interest rates, which Freddie Mac's July 1, 2010 Primary Mortgage Market Survey indicated had fallen to 4.58 percent for a 30-year, fixed-rate mortgage. Even under favorable interest rate conditions, however, refinancings may not mirror previous years.

For homeowners with a current LTV ratio between 80 and 125 percent, the Enterprises will refinance mortgages without requiring additional mortgage insurance. Of the 2.5 million borrowers who refinanced their mortgages with Fannie Mae financing in 2009, 329,000 refinanced through Fannie Mae's streamlined process, including 105,000 Fannie Mae borrowers who refinanced through HARP. Of the 1.7 million borrowers who refinanced their mortgages with Freddie Mac financing in 2009, 169,000 refinanced through Freddie Mac's streamlined process, including 86,000 Freddie Mac borrowers who refinanced through HARP.

*Demographic conditions.* In establishing the 2010 goals, FHFA analyzed current demographic trends for their possible effect on housing demand. Analysis of current trends reveals that by 2008, household formation rates were already on the decline. In addition, the recession and unemployment have reduced immigration, which in the past has been a driver of housing demand. It is still too early to assess the impact of the current economic downturn on housing demand, particularly given regional variations in impact and mitigating factors, such as increased affordability of housing ownership. In the long-term, housing demand is likely to increase as a result of population growth, immigration, and future household formation by the generation born between 1981 and 2000.[40] However, the impact of long-term demographic conditions on short-term goals performance would be minimal.

3. The Performance and Effort of the Enterprises Toward Achieving the Housing Goals in Previous Years

Section 1332(a) of the Safety and Soundness Act, as amended by section 1128 of HERA, requires FHFA to establish three single-family home purchase mortgage goals for the Enterprises: A goal for low-income families; a goal for families that reside in low-income areas; and a goal for very low-income families. Section 1332(a) also requires FHFA to establish a goal for single-family refinancing mortgages for low-income families. The following section reviews what performance would have been on these four single-family goals if they had been in effect over the 2001–09 period.

*Low-Income Families Housing Goal.* The housing goals in the Safety and Soundness Act, as amended, apply to the Enterprises' acquisitions of "conventional, conforming, single-family, purchase money mortgages financing owner-occupied housing" for the targeted groups. Accordingly, they are similar in structure to the home purchase subgoals established by HUD for Fannie Mae and Freddie Mac for 2005–08, and subsequently adjusted for 2009 by FHFA. One difference is that the subgoals established by HUD applied only to mortgages on properties in metropolitan areas, while the new goals apply to mortgages on properties in all locations.

The low-income families home purchase goal applies to mortgages made to "low-income families," defined as families with incomes no greater than 80 percent of AMI.[41] Past performance on this goal, if it had been in effect in previous years, is shown in Table 1. Performance is shown excluding units

[37] On August 10, 2007, OFHEO issued letters directing the Enterprises to apply the principles and practices of the interagency *Statement on Subprime Mortgage Lending* to their purchases of subprime loans in the regular flow of business, including bulk purchases. OFHEO directed that, not later than September 13, 2007, nontraditional and subprime loans purchased by Fannie Mae and Freddie Mac as part of PLS transactions comply with the *Interagency Guidance on Nontraditional Mortgage Product Risks* and the *Statement on Subprime Mortgage Lending.* This application to PLS conformed to the underwriting provisions of the guidance. Further, OFHEO directed that the Enterprises adopt such business practices and take such quality control steps as necessary to ensure the orderly and effective implementation of the guidance with respect to the purchase of PLS. OFHEO News Release (Sept. 10, 2007).

[38] Bureau of Labor Statistics, News Release: *The Employment Situation—July 2010.* August 6, 2010.

[39] NeighborWorks, *National Foreclosure Mitigation Counseling Program, Congressional Update, Activity Through January 31, 2010.* May 28, 2010.

[40] "State of the Nation's Housing 2009." Joint Center for Housing Studies of Harvard University.

[41] 12 U.S.C. 4502(14).

financed by Enterprise purchases of PLS; as discussed elsewhere in this final rule, FHFA has decided to exclude such units from the numerator and the denominator in calculating goal performance for 2010 and 2011, although the PLS market has declined markedly. As indicated, Fannie Mae's performance (excluding PLS) would have risen markedly between 2001 and 2003, and then, with the exception of 2006, would have fallen steadily between 2003 and 2008. Its performance in 2008, at 23.1 percent, would have been the lowest of the period. Freddie Mac's performance generally would have risen between 2001 and 2005, and then declined between 2005 and 2008. Its performance in 2008 would have been 24.3 percent, also the lowest of the period.

Total Enterprise home purchase loan volume fell sharply in 2008 and 2009—for Fannie Mae, from 1.5 million mortgages in 2007 to 978,000 in 2008 and 723,000 in 2009, and for Freddie Mac, from 1.0 million mortgages in 2007 to 655,000 in 2008 and 482,000 in 2009, due to the turmoil and tightened underwriting standards in the mortgage market. However, the low-income share of home purchase loans rose for both Enterprises, from 23.1 percent in 2008 to 25.5 percent in 2009 for Fannie Mae, and from 24.3 percent in 2008 to 25.4 percent in 2009 for Freddie Mac. Possible explanations for this include the greater affordability of housing and a decrease in the role of investors in the home purchase market.

In setting the goals for the Enterprises for 2010 and 2011, FHFA recognizes the impact that counting loan modifications of home purchase mortgages would have had on the home purchase goals in prior years. Data on the volume and shares of loan modifications counting toward the low-income home purchase goal in 2009 are also shown in Table 1. As indicated, 67.2 percent of Fannie Mae's modifications of home purchase mortgages and 65.3 percent of Freddie Mac's modifications were for lower-income families. Combined performance on this goal, including both home purchase mortgages and modifications, would have been 33.5 percent for Fannie Mae and 30.9 percent for Freddie Mac in 2009, as shown in Table 1. However, as discussed elsewhere in this final rule, modifications of mortgages will be treated differently for purposes of the housing goals in 2010–2011. Specifically, modifications of mortgages will be counted only under the refinancing housing goal, not under the housing goals for home purchase mortgages. This means that, in order to be comparable, the 2009 low-income home purchase goal performance figure in Table 1 reflects performance excluding loan modifications.

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## Table 1

## GSE Past Performance on the Low-Income Home Purchase Goal, 2001-09

**(Performance if 2010 goal had been in effect, excluding mortgages financed by the purchase of private-label securities [PLS]; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)**

| Year | Type of Activity | Fannie Mae | | | Freddie Mac | | | HMDA Market Share |
|---|---|---|---|---|---|---|---|---|
| | | Low-Income | Total | Low-Inc. % | Low-Income | Total | Low-Inc. % | |
| 2009 | Home Purchase Mortgages | 148,423 | 582,673 | 25.5% | 105,719 | 415,897 | 25.4% | NA |
| | HP Loan Modifications | 93,681 | 139,374 | 67.2% | 43,144 | 66,054 | 65.3% | NA |
| | Total | 242,104 | 722,047 | 33.5% | 148,863 | 481,951 | 30.9% | NA |
| 2008 | Home Purchase Mortgages | 226,290 | 977,852 | 23.1% | 158,896 | 655,156 | 24.3% | 26.9% |
| 2007 | Home Purchase Mortgages | 383,129 | 1,471,242 | 26.0% | 248,434 | 1,008,064 | 24.6% | 27.6% |
| 2006 | Home Purchase Mortgages | 359,609 | 1,295,986 | 27.7% | 197,900 | 895,049 | 22.1% | 25.8% |
| 2005 | Home Purchase Mortgages | 352,344 | 1,270,461 | 27.7% | 230,057 | 912,355 | 25.2% | 25.9% |
| 2004 | Home Purchase Mortgages | 389,210 | 1,354,503 | 28.7% | 193,308 | 788,967 | 24.5% | 27.9% |
| 2003 | Home Purchase Mortgages | 506,449 | 1,675,440 | 30.2% | 199,220 | 763,798 | 26.1% | |
| 2002 | Home Purchase Mortgages | 371,418 | 1,385,982 | 26.8% | 255,657 | 978,684 | 26.1% | |
| 2001 | Home Purchase Mortgages | 344,720 | 1,331,681 | 25.9% | 237,253 | 966,088 | 24.6% | |

Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Low-income" refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

Notes: Figures differ from those in Table 1 of the proposed rule (*Federal Register*, 2/26/10, p. 9041) because the data in the proposed rule included mortgages financed by the purchase of private-label securities (PLS) and because those figures included Enterprise purchases of FHA-insured loans (primarily FHA Home Equity Conversion Mortgages, or HECMs, purchased by Fannie Mae.)

Performance on this goal including trial HAMP loan modifications in 2009 is shown for information only. As discussed in the rule, for 2010-11 credit will be given toward the low-income refinance goal for permanent HAMP loan modifications for low-income families; loan modifications will not be counted toward any of the single-family home purchase goals in 2010-11.

*Very Low-Income Families Housing Goal.* The Safety and Soundness Act, as amended by HERA, defines a "very low-income" owner-occupied property as one occupied by a family with income

no greater than 50 percent of AMI.[42] Past performance on this home purchase goal, if it had been in effect in previous years, is shown in Table 2. As indicated, Fannie Mae's performance would have risen from 6.1 percent in 2001 to 7.9 percent in 2003, and then generally decreased, to 5.5 percent in 2008, the lowest in the period. With the exception of 2006, Freddie Mac's performance on this goal would have changed little over the 2001–08 period, remaining in the range of 6.0 percent to 6.7 percent.

[42] 12 U.S.C. 4502(24).

The very low-income share of home purchase loans rose for both Enterprises, from 5.5 percent in 2008 to 7.3 percent in 2009 for Fannie Mae, and from 6.1 percent in 2008 to 7.2 percent in 2009 for Freddie Mac.

Data on the volume and shares of modifications counting toward the very low-income home purchase goal are also shown in Table 2. As indicated, 27.5 percent of Fannie Mae's modifications of home purchase mortgages and 26.0 percent of Freddie Mac's modifications were for very low-income families. Thus, combined performance on this goal, including both home purchase mortgages and modifications, would have been 11.2 percent for Fannie Mae and 9.8 percent for Freddie Mac in 2009, as shown in Table 2. However, as discussed above, modifications of mortgages will be counted only under the refinancing housing goal, not under the housing goals for home purchase mortgages. This means that, in order to be comparable, the 2009 very low-income home purchase goal performance figure in Table 2 reflects performance excluding loan modifications.

## Table 2

## GSE Past Performance on the Very Low-Income Home Purchase Goal, 2001-09

**(Performance if 2010 goal had been in effect, excluding mortgages financed by the purchase of private-label securities [PLS]; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)**

| | | Fannie Mae | | | Freddie Mac | | | HMDA Market |
|---|---|---|---|---|---|---|---|---|
| Year | Type of Activity | Very Low-Inc. | Total | VLI % | Very Low-Inc. | Total | VLI % | Share |
| 2009 | Home Purchase Mortgages | 42,571 | 582,673 | 7.3% | 29,870 | 415,897 | 7.2% | NA |
| | HP Loan Modifications | 38,332 | 139,374 | 27.5% | 17,193 | 66,054 | 26.0% | NA |
| | Total | 80,903 | 722,047 | 11.2% | 47,063 | 481,951 | 9.8% | NA |
| 2008 | Home Purchase Mortgages | 54,263 | 977,852 | 5.5% | 40,009 | 655,156 | 6.1% | 7.2% |
| 2007 | Home Purchase Mortgages | 93,543 | 1,471,242 | 6.4% | 60,549 | 1,008,064 | 6.0% | 7.0% |
| 2006 | Home Purchase Mortgages | 100,148 | 1,295,986 | 7.7% | 47,008 | 895,049 | 5.3% | 6.6% |
| 2005 | Home Purchase Mortgages | 91,658 | 1,270,461 | 7.2% | 59,236 | 912,355 | 6.5% | 6.4% |
| 2004 | Home Purchase Mortgages | 100,360 | 1,354,503 | 7.4% | 48,589 | 788,967 | 6.2% | 7.2% |
| 2003 | Home Purchase Mortgages | 132,250 | 1,675,440 | 7.9% | 50,872 | 763,798 | 6.7% | |
| 2002 | Home Purchase Mortgages | 91,843 | 1,385,982 | 6.6% | 65,753 | 978,684 | 6.7% | |
| 2001 | Home Purchase Mortgages | 81,803 | 1,331,681 | 6.1% | 58,757 | 966,088 | 6.1% | |

**Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Very Low-income" refers to borrowers with incomes no greater than 50 percent of Area Median Income (AMI).**

**Notes: Figures differ from those in Table 2 of the proposed rule (*Federal Register*, 2/26/10, p. 9042) because the data in the proposed rule included mortgages financed by the purchase of private-label securities (PLS) and because those figures included Enterprise purchases of FHA-insured loans (primarily FHA Home Equity Conversion Mortgages, or HECMs, purchased by Fannie Mae.)**

**Performance on this goal including trial HAMP loan modifications in 2009 is shown for information only.**
**As discussed in the rule, for 2010-11 credit will be given toward the low-income refinance goal for permanent HAMP loan modifications for low-income families; loan modifications will not be counted toward any of the single-family home purchase goals in 2010-11.**

*Low-Income Areas Housing Goal and Subgoal.* The low-income areas housing goal targets the Enterprises' purchases of mortgages in specified geographic areas, in a manner similar to the previous underserved areas goal. The Safety and

Soundness Act, as amended by HERA, now defines a "low-income area" as a census tract or block numbering area in which the median income does not exceed 80 percent of AMI, and it includes families with incomes not greater than 100 percent of AMI who reside in minority census tracts or in designated disaster areas.[43] It defines a "minority census tract" as a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of AMI.[44]

According to the 2000 census, of the 66,145 census tracts, there were 18,615 low-income tracts. There were 25,254 tracts with a minority population of at least 30 percent, of which 5,710 had a tract income greater than 80 percent of AMI but less than 100 percent of AMI. Accordingly, based on the 2000 census, there were 24,325 tracts that would be targeted by this goal, excluding tracts in designated disaster areas, but only families with incomes no greater than 100 percent of AMI would be included in the 5,710 high-minority, moderate-income tracts.

Past performance on the low-income areas housing goal, if it had been in effect in previous years, including designated disaster areas, is shown in Table 3A. This measurement corresponds to the overall low-income areas housing goal. The inclusion of designated disaster areas would have had a significant impact on the performance of each Enterprise under this goal. The impact of the designated disaster areas would also have changed significantly from year to year. As discussed above, modifications of mortgages will be counted only under the refinancing housing goal, not under the housing goals for home purchase mortgages. This means that, in order to be comparable, the 2009 low-income areas home purchase goal performance figure in Table 3A reflects performance excluding loan modifications.

**Table 3A**

**GSE Past Performance on the Low-Income Areas Home Purchase Goal, 2007-09**

**(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; includes loans on properties in disaster areas declared in the previous three years; excludes loans with missing borrower income from the denominator; excludes loans financed by purchases of private-label mortgage-backed securities [PLS] from the numerator and the denominator.)**

| Year | Type of Home Purchase (HP) Mortgages | GSE | | HMDA Market Share |
|---|---|---|---|---|
| | | Fannie Mae | Freddie Mac | |
| 2009 | Low-Inc./High Min. Tract HP Mtgs.* | 77,499 | 48,397 | |
| | Disaster Area HP Mortgages** | 79,255 | 55,565 | |
| | Subtotal | 156,754 | 103,962 | |
| | Total HP Mortgages | 582,673 | 415,897 | |
| | Subtotal % of Mortgages | 26.9% | 25.0% | NA |
| | Low-Inc./High Min. Tract Loan Mods* | 39,694 | 18,402 | |
| | Disaster Area HP Loan Mods** | 32,153 | 14,767 | |
| | Subtotal | 71,847 | 33,169 | |
| | Total HP Loan Mods | 139,374 | 66,054 | |
| | Subtotal % of HP Loan Mods | 51.5% | 50.2% | |
| | Low-Inc./High Min. Tract Total | 117,193 | 66,799 | |
| | Disaster Area Total** | 111,408 | 70,332 | |
| | Subtotal | 228,601 | 137,131 | |
| | Total HP Mortgages and Loan Mods | 722,047 | 481,951 | |
| | Subtotal % of Total | 31.7% | 28.5% | |
| 2008 | Low-Inc./High Min. Tract HP Mtgs.* | 148,120 | 99,448 | |
| | Disaster Area HP Mortgages** | 100,822 | 67,776 | |
| | Subtotal | 248,942 | 167,224 | |
| | Total HP Mortgages | 977,852 | 655,156 | |
| | Subtotal % of Mortgages | 25.5% | 25.5% | 25.5% |
| 2007 | Low-Inc./High Min. Tract HP Mtgs.* | 249,404 | 159,898 | |
| | Disaster Area HP Mortgages** | 221,654 | 146,027 | |
| | Subtotal | 471,058 | 305,925 | |
| | Total HP Mortgages | 1,471,242 | 1,008,064 | |
| | Subtotal % of Mortgages | 32.0% | 30.3% | 31.4% |

**Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Low-income tracts" are those with tract income no greater than 80 percent of area median income (AMI). "High minority tract mortgages" refer to home purchase loans made to families with incomes no greater than 100 percent of AMI living in tracts where minorities comprise at least 30 percent of the population and tract median income exceeds 80 percent of AMI but is less than 100 percent of AMI.**

***Breakdown between low-income tracts and high-minority tracts contained in Table 3B.**

****Increment of Disaster Area HP Mortgages not already qualifying under low-income/high minority designation.**

**Performance on this goal including trial HAMP loan modifications in 2009 is shown for information only. As discussed in the rule, for 2010-11 credit will be given toward the low-income refinance goal for permanent HAMP loan modifications for low-income families; loan modifications will not be counted toward any of the single-family home purchase goals in 2010-11.**

Past performance on the new low-income areas housing subgoal if it had been in effect in previous years, excluding designated disaster areas, is shown in Table 3B. The exclusion of designated disaster areas corresponds to the new low-income areas housing subgoal. As indicated, Fannie Mae's performance would have varied over

[43] 12 U.S.C. 4502(28).

[44] 12 U.S.C. 4502(29).

time. It would have reached its highest level, 19.1 percent, in 2002, and its lowest level, 15.1 percent, in 2008. Freddie Mac's performance would have peaked at 18.6 percent in 2002, then fallen sharply to 12.1 percent in 2003, and would have been 15.2 percent in 2008. As discussed above, modifications of mortgages will be counted only under the refinancing housing goal, not under the housing goals for home purchase mortgages. This means that, in order to be comparable, the 2009 low-income areas home purchase goal performance figure in Table 3B reflects performance excluding loan modifications.

**Table 3B**

**GSE Past Performance on the Low-Income Areas Home Purchase Goal, 2001-09**

**(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; excludes loans on properties in disaster areas from the numerator, but see Table 3B for 2007-09; excludes loans with missing borrower income from the denominator; excludes loans financed by purchases of private-label mortgage-backed securities [PLS] from the numerator and the denominator.)**

| Year | Type of Home Purchase (HP) Mortgages | GSE | | HMDA Market Share |
|---|---|---|---|---|
| | | Fannie Mae | Freddie Mac | |
| 2009 | Low-Income Tract HP Mortgages | 59,150 | 37,138 | |
| | High-Minority Tract HP Mortgages | 18,349 | 11,259 | |
| | Subtotal Goal-Qualifying Mortgages | 77,499 | 48,397 | |
| | Total HP Mortgages | 582,673 | 415,897 | |
| | Low-Inc. Area % of Mortgages | **13.3%** | **11.6%** | **NA** |
| | Low-Income Tract HP Loan-Mods | 25,255 | 11,701 | |
| | High-Minority Tract HP Loan Mods | 14,439 | 6,701 | |
| | Subtotal Goal-Qualifying HP Loan Mods | 39,694 | 18,402 | |
| | Total HP Loan Mods | 139,374 | 66,054 | |
| | Low-Inc. Area % of HP Loan Mods | **28.5%** | **27.9%** | **NA** |
| | Low-Income Tract Total | 84,405 | 48,839 | |
| | High-Minority Tract Total | 32,788 | 17,960 | |
| | Subtotal Goal-Qualifying Total | 117,193 | 66,799 | |
| | Total HP Mortgages and Loan Mods | 722,047 | 481,951 | |
| | Low-Inc. Area % of Total | **16.2%** | **13.9%** | **NA** |
| 2008 | Low-Income Tract HP Mortgages | 118,875 | 80,288 | |
| | High-Minority Tract HP Mortgages | 29,245 | 19,160 | |
| | Subtotal Goal-Qualifying Mortgages | 148,120 | 99,448 | |
| | Total HP Mortgages | 977,852 | 655,156 | |
| | Low-Inc. Area % of Mortgages | **15.1%** | **15.2%** | **14.3%** |
| 2007 | Low-Income Tract HP Mortgages | 203,454 | 131,181 | |
| | High-Minority Tract HP Mortgages | 45,950 | 28,717 | |
| | Subtotal Goal-Qualifying Mortgages | 249,404 | 159,898 | |
| | Total HP Mortgages | 1,471,242 | 1,008,064 | |
| | Low-Inc. Area % of Mortgages | **17.0%** | **15.9%** | **16.2%** |
| 2006 | Low-Income Tract HP Mortgages | 171,485 | 101,208 | |
| | High-Minority Tract HP Mortgages | 40,140 | 19,577 | |
| | Subtotal Goal-Qualifying Mortgages | 211,625 | 120,785 | |
| | Total HP Mortgages | 1,295,986 | 895,049 | |
| | Low-Inc. Area % of Mortgages | **16.3%** | **13.5%** | **15.8%** |
| 2005 | Low-Income Tract HP Mortgages | 160,234 | 100,824 | |
| | High-Minority Tract HP Mortgages | 39,090 | 21,596 | |
| | Subtotal Goal-Qualifying Mortgages | 199,324 | 122,420 | |
| | Total HP Mortgages | 1,270,461 | 912,355 | |
| | Low-Inc. Area % of Mortgages | **15.7%** | **13.4%** | **15.3%** |
| 2004 | Low-Income Tract HP Mortgages | 166,966 | 76,456 | |
| | High-Minority Tract HP Mortgages | 46,559 | 18,774 | |
| | Subtotal Goal-Qualifying Mortgages | 213,525 | 95,230 | |
| | Total HP Mortgages | 1,354,503 | 788,967 | |
| | Low-Inc. Area % of Mortgages | **15.8%** | **12.1%** | **16.7%** |
| 2003 | Low-Income Tract HP Mortgages | 201,095 | 73,670 | |
| | High-Minority Tract HP Mortgages | 64,476 | 18,968 | |
| | Subtotal Goal-Qualifying Mortgages | 265,571 | 92,638 | |
| | Total HP Mortgages | 1,675,440 | 763,798 | |
| | Low-Inc. Area % of Mortgages | **15.9%** | **12.1%** | |
| 2002 | Low-Income Tract HP Mortgages | 203,075 | 145,703 | |
| | High-Minority Tract HP Mortgages | 61,800 | 36,394 | |
| | Subtotal Goal-Qualifying Mortgages | 264,875 | 182,097 | |
| | Total HP Mortgages | 1,385,982 | 978,684 | |
| | Low-Inc. Area % of Mortgages | **19.1%** | **18.6%** | |
| 2001 | Low-Income Tract HP Mortgages | 185,670 | 122,252 | |
| | High-Minority Tract HP Mortgages | 53,112 | 31,745 | |
| | Subtotal Goal-Qualifying Mortgages | 238,782 | 153,997 | |
| | Total HP Mortgages | 1,331,681 | 966,088 | |
| | Low-Inc. Area % of Mortgages | **17.9%** | **15.9%** | |

**Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Low income tracts" are those with tract income no greater than 80 percent of area median income (AMI). "High minority tract mortgages" refer to home purchase loans made to families with incomes no greater than 100 percent of AMI living in tracts where minorities comprise at least 30 percent of the population and tract median income exceeds 80 percent of AMI but is less than 100 percent of AMI. This goal also includes home purchase loans made to families in designated disaster areas; such mortgages are not included in this table, but they are included in Table 3A for 2007-09**

**Notes: Figures differ from those in Table 3 of the proposed rule (*Federal Register*, 2/26/10, p. 9043) because the data in the proposed rule included mortgages financed by the purchase of private-label securities (PLS) and because those figures included Enterprise purchases of FHA-insured loans (primarily FHA Home Equity Conversion Mortgages, or HECMs, purchased by Fannie Mae.)**

**Performance on this goal including trial HAMP loan modifications in 2009 is shown for information only. As discussed in the rule, for 2010-11 credit will be given toward the low-income refinance goal for permanent HAMP loan modifications for low-income families; loan modifications will not be counted toward any of the single-family home purchase goals in 2010-11.**

*Refinancing Housing Goal.* Under the Safety and Soundness Act, as amended by HERA, the refinancing housing goal is targeted to low-income families, *i.e.,* families with incomes no greater than 80 percent of AMI. It applies to mortgages that are given to pay off or prepay an existing loan secured by the same property. Thus, the goal would not apply to home equity or home purchase loans.

Past performance on this goal, if it had been in effect in previous years, is shown in Table 4. As indicated, Fannie Mae's performance (again, excluding units financed by purchases of PLS) would have peaked in 2005 at 28.4 percent, following the 2001–03 refinance boom, and declined thereafter over the 2006–08 period to a low of 23.1 percent in 2008. Freddie Mac's performance would also have peaked in 2005 at 26.3 percent, and then also declined to 26.0 percent in 2006, 25.2 percent in 2007, and 23.2 percent in 2008.

Performance on the refinancing goal is also shown in Table 4 for 2009. As indicated, performance exclusive of loan modifications fell to the lowest levels of this period—19.9 percent for Fannie Mae and 19.1 percent for Freddie Mac. However, 67.9 percent of Fannie Mae's modifications of refinance mortgages pursuant to HAMP and 67.7 percent of Freddie Mac's modifications of refinance mortgages pursuant to HAMP were for low-income families. As a result, total performance on the goal, including modifications pursuant to HAMP, would have been 23.0 percent for Fannie Mae and 21.7 percent for Freddie Mac.

However, as discussed elsewhere in this rule, the treatment of loan modifications for purposes of the housing goals will be different in 2010–2011 than it was in 2009, in two respects. First, only permanent modifications of mortgages will be counted as mortgage purchases—that is, for 2010, only modifications initiated and made permanent in 2010 will be counted, and for 2011, only modifications made permanent in 2011 will be counted. Second, loan modifications will be counted only under the refinancing housing goal, not under the housing goals for home purchase mortgages. This differs from the treatment of loan modifications in 2009, when loan modifications were treated as either refinancing loans or home purchase loans, depending on the original purpose of the loan that was modified. The data in Table 4 indicate what performance under the low-income refinancing housing goal would have been in 2009 under the 2009 provisions for counting loan modifications. Performance excluding all loan modifications would have been 19.9 percent for Fannie Mae and 19.1 percent for Freddie Mac. Performance including initial loan modifications of low-income refinancing mortgages would have been 23.0 percent for Fannie Mae and 21.7 percent for Freddie Mac. FHFA estimates that approximately 25 percent of all loan modifications initiated by the Enterprises in 2009 were actually made permanent in 2009. Thus, 2009 performance under the low-income refinancing housing goal, based on the 2010 provisions for counting loan modifications, would have been less than the performance figures including initial loan modifications, but greater than the performance figures excluding all loan modifications. Assuming that the low-income shares of permanent modifications in 2009 were the same as the low-income shares of initial modifications in 2009, FHFA estimates that performance on the low-income refinancing housing goal in 2009 would have been approximately 21.3 percent for Fannie Mae and 20.2 percent for Freddie Mac.

**Table 4**

**GSE Past Performance on the Low-Income Refinance Goal, 2001-09**

**(Performance if 2010 goal had been in effect, excluding mortgages financed by the purchase of private-label securities [PLS]; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)**

| Year | Type of Activity | Fannie Mae | | | Freddie Mac | | | HMDA Market Share |
|---|---|---|---|---|---|---|---|---|
| | | Low-Income | Total | Low-Inc. % | Low-Income | Total | Low-Inc. % | |
| 2009 | Refinance Mortgages | 479,631 | 2,415,169 | 19.9% | 326,912 | 1,708,676 | 19.1% | NA |
| | Refinance Loan Modifications | 114,390 | 168,437 | 67.9% | 63,708 | 94,062 | 67.7% | NA |
| | Total | 594,021 | 2,583,606 | 23.0% | 390,620 | 1,802,738 | 21.7% | NA |
| 2008 | Refinance Mortgages | 335,864 | 1,455,287 | 23.1% | 215,016 | 927,816 | 23.2% | 24.7% |
| 2007 | Refinance Mortgages | 351,739 | 1,421,342 | 24.7% | 252,889 | 1,005,519 | 25.2% | 25.4% |
| 2006 | Refinance Mortgages | 301,995 | 1,133,684 | 26.6% | 217,882 | 838,104 | 26.0% | 26.2% |
| 2005 | Refinance Mortgages | 403,366 | 1,421,340 | 28.4% | 310,234 | 1,179,812 | 26.3% | 26.8% |
| 2004 | Refinance Mortgages | 525,853 | 1,857,975 | 28.3% | 337,617 | 1,331,491 | 25.4% | 27.6% |
| 2003 | Refinance Mortgages | 1,575,054 | 6,194,685 | 25.4% | 818,225 | 3,785,945 | 21.6% | |
| 2002 | Refinance Mortgages | 773,838 | 3,253,383 | 23.8% | 602,547 | 2,733,601 | 22.0% | |
| 2001 | Refinance Mortgages | 561,901 | 2,323,628 | 24.2% | 388,502 | 1,712,138 | 22.7% | |

**Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Low-income" refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).**

**Notes: Figures differ from those in Table 4 of the proposed rule (*Federal Register*, 2/26/10, p. 9044) because the data in the proposed rule included mortgages financed by the purchase of private-label securities (PLS) and because those figures included Enterprise purchases of FHA-insured loans (primarily FHA Home Equity Conversion Mortgages, or HECMs purchased by Fannie Mae.)**

**Performance on this goal including trial HAMP loan modifications in 2009 is shown for information only. As discussed in the rule, for 2010-11 credit will be given toward this goal for all permanent HAMP loan modifications for low-income families; loan modifications will not be counted toward any of the single-family home purchase goals in 2010-11. As indicated in the rule, FHFA has increased this goal for 2010-11 by two percentage points above the level that would have applied if no credit were awarded for loan modifications.**

*Interpreting Past Goal Performance Data.* Past performance is not necessarily a good indicator of future goal performance, due to changes in mortgage interest rates, home prices, credit availability, and other factors. In recent years, for example, the Enterprises purchased PLS primarily due to anticipated profitability, to maintain market share, and because some PLS, especially those containing subprime mortgages, helped achieve the housing goals. Elsewhere in this final rule is a more detailed discussion regarding the exclusion of mortgages included in PLS from counting toward the housing goals in 2010–2011. The performance data in Tables 1–4 show

performance excluding the effects of these PLS purchases.

In response to the housing crisis and their financial difficulties, including the performance of PLS, the Enterprises have adopted more conservative underwriting guidelines. As previously discussed, those changes in underwriting standards will affect goal performance as compared to the past goal performance of the Enterprises.

4. The Ability of the Enterprises To Lead the Industry in Making Mortgage Credit Available

As background for the statutory requirement to consider the Enterprises' "ability * * * to lead the industry in making mortgage credit available," a Senate committee report on legislation leading to the enactment of the Safety and Soundness Act in 1992 expressed concern that Enterprise purchases had not kept pace with market originations of mortgages to low- and moderate-income borrowers.[45] FHFA shares that concern and has defined the Enterprise housing goals in part against that history. FHFA believes that, in fact, the Enterprises, directly supported by the Treasury Department, have played a leading role in sustaining the mortgage market during the recent crisis.

Leading the industry in making mortgage credit available includes making mortgage credit available to primary market borrowers at different income levels. It also includes the ability of the Enterprises to respond to pressing mortgage needs in the current market, such as the threat of a loss of a home by the borrower, for example, by implementing the loan modification and refinance programs under the Administration's Making Home Affordable (MHA) Program, and by supporting state and local housing finance agencies. The Enterprises' ability to respond is reflected through the introduction of safe and sound innovative products, technology and process improvements.

In the current market environment, the Enterprises, along with FHA and VA, lead the market. In the first quarter of 2010, they had a combined purchase market share of nearly 100 percent.[46]

From 1997–2003, the Enterprises' share of purchases of mortgage originations grew to almost 55 percent. From 2004–2006, the private mortgage market predominated, and the Enterprises' market share dropped to below 35 percent. After the private mortgage market began to deteriorate in 2007, the Enterprises' share of the mortgage purchase and guarantee activity represented more than 76 percent of total conforming single-family originations in 2009.[47]

At the same time, the Enterprises have been severely stressed by the financial crisis. As described below, they have suffered losses that have depleted their capital, and they have been sustained only by multi-billion dollar infusions of capital from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements. In this environment, with FHFA as conservator exercising a statutory mandate to conserve and preserve the Enterprises' assets, it is especially important that the Enterprises not take on undue additional credit risk by purchasing mortgages in any defined segment in quantities beyond what market originations reasonably provide.

FHFA has taken into account all of the foregoing considerations in assessing the Enterprises' ability to lead the industry.

5. Other Mortgage Data

The primary source of reliable mortgage data for establishing the housing goals is the HMDA data reported by originators. Enterprise mortgage purchase data are compared to HMDA data to evaluate the Enterprises' performance with respect to leading or lagging the housing market under specific housing goals.

FHFA also uses other reliable data sources including the American Housing Survey (AHS), Census demographics, commercial sources such as Moody's,[48] and other industry and trade research sources, *e.g.,* Mortgage Bankers Association (MBA),[49] Inside Mortgage Finance Publications,[50] NAR,[51] National Association of Home Builders (NAHB),[52] and the CRE Finance Council.[53] The FHFA MIRS,[54] previously administered by the Federal Housing Finance Board, a predecessor agency to FHFA, is used to complement forecast models for home purchase loan originations by making intra-annual adjustments prior to the public release of HMDA mortgage data. In the development of economic forecasts, FHFA uses data and information from Wells Fargo, PNC, Fannie Mae, Freddie Mac, The Wall Street Journal Survey, Standard and Poor's, The Conference Board and the Federal Open Market Committee. In addition, FHFA uses market and economic data from the Bureau of Labor Statistics, the Federal Reserve Board, the Department of Commerce Bureau of Economic Analysis, and FedStats.[55]

6. Market Size

In general, the single-family mortgage market environment of 2009 is expected to extend to 2010, with modest improvements in 2011. Quantifiable factors influencing FHFA's outlook for the mortgage market include general growth in the economy, employment and inflation. Other factors that are less easily quantified include the effect of the homebuyer tax credit on the mortgage market. Also, activity in the subprime market is expected to be minimal through 2011.

In particular, the following factors have a direct or indirect impact on the affordability of home purchases or the refinancing of mortgages:

*Interest Rates.* To a large extent, FHFA's estimates of affordability in the mortgage market rely on a continuing low interest rate environment. Interest rates are expected to remain low in the near future and possibly through 2011 as the Federal Reserve expects to continue its low interest rate policy.[56] Mortgage interest rates reached an all-time low in August 2010, with the national average interest rate on a 30-year fixed-rate mortgage reaching 4.42 percent.[57] Lower interest rates directly affect the affordability of buying a home or refinancing a mortgage.

*Unemployment.* In addition to being an indicator of the health of the economy in general, the employment situation impacts the housing market more directly in that buying a house is a large investment and a long-term commitment of mortgage payments. Private-sector payroll employment edged up by 71,000 and the unemployment rate remained at 9.5

[45] S. Rep. No. 102–282, at 10–11 (1992).

[46] The combined purchase market share of Fannie Mae, Freddie Mac and Ginnie Mae was 98 percent, down slightly from 99 percent in the prior year. "Fannie, Freddie GNMA At Nearly 100% Share." National Mortgage News, May 31, 2010.

[47] Statement of Edward DeMarco, Acting Director of the Federal Housing Finance Agency, U.S. House of Representatives House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises." May 26, 2010.

[48] *http://www.moodys.com/.*

[49] *http://www.mbaa.org/.*

[50] *http://www.imfpubs.com/.*

[51] *http://www.realtor.org/.*

[52] *http://www.nahb.org/.*

[53] *http://www.cmsaglobal.org/CMSA_Resources/Research/Market_Statistics/Market_Statistics/.*

[54] *http://www.fhfa.gov/Default.aspx?Page=250.*

[55] *http://www.fedstats.gov/other.html.*

[56] "The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent." Minutes of the Federal Open Market Committee, June 22–23, 2010, p. 10.

[57] Freddie Mac. *Primary Mortgage Market Survey.* August 19, 2010.

percent in July.[58] The unemployment rate is still historically high and will likely remain above eight percent in the 2010 to 2011 period. To the extent that lower-income jobs are affected more by the employment situation, the affordable home purchase market is affected.

*House Prices.* The price of housing has a direct impact on the affordability of home mortgages. The housing and mortgage markets are also influenced by trends in house prices. In periods of house price appreciation, home sales and mortgage originations increase as the expected return on investment rises. In periods of price depreciation or price uncertainty, home sales and mortgage originations decrease as risk-adverse homebuyers are reluctant to enter the market. Between May 2009 and May 2010, FHFA's purchase-only House Price Index shows prices down 1.2 percent, compared to a 5.8 percent price decline between May 2008 and May 2009. While price declines appear to be moderating, and while the S&P/Case Shiller Home Price Index actually shows prices increased 5.4 percent over the May 2009 to May 2010 period, prices are expected to decline further during the third quarter of 2010.[59] An analysis by Wells Fargo Securities Economics Group states that "[t]he combination of high inventories and declining home sales means prices should turn down again this summer."[60]

*Housing Market.* A robust housing market is generally good for the affordable home market. Home sales, after increasing 8.4 percent in March and 8.2 percent in April, have decreased 4.6 percent in June and another 3.8 percent in July. Both the increase and the subsequent decrease in home sales may be attributed to the homebuyers' tax credit program and its expiration. Many industry observers expect that home sales will remain near recent lows during the remainder of 2010. According to an analysis by Wells Fargo Securities Economics Group, "[s]ales of existing homes fell 5.1 percent in June to a still relatively robust 5.37 million-unit pace. Sales continue to be supported by tax credits. Delays in the closing process have led to an extension of the closing deadline which will likely smooth the adjustment to the post-tax credit environment."[61]

The additional first-time homebuyers taking advantage of the $8,000 tax credit will likely have a positive impact on the housing goals. The additional repeat homebuyers who qualify for the $6,500 tax credit (there is a five-year occupancy requirement) will likely have a negative impact on the housing goals. The repeat homebuyers who qualify for the tax credit include a greater proportion of older and thus higher income borrowers.

*FHA Market Share.* The composition of the affordable conventional mortgage market is also influenced by FHA's market share, which rose significantly in 2008–2009 and continues to be high. Mortgages insured by FHA are likely to continue to represent a significant share of the mortgage market in 2010 and 2011. These loans generally are pooled into mortgage-backed securities guaranteed by GNMA. Purchases of mortgages insured by FHA and VA ordinarily do not receive housing goals credit.

As shown in Figure 1, the market share of all mortgages insured by FHA has increased dramatically. A key reason for this growth is that Fannie Mae and Freddie Mac generally cannot buy loans with original LTV ratios greater than 80 percent without some form of credit enhancement. Borrowers without substantial down payments are increasingly utilizing government insurance programs. Since FHA's market share increase appears to coincide with the demise of the subprime market, it would be easy to conclude that FHA loans are now assisting the types of borrowers who previously were served by subprime products. However, FHA's internal data indicate that the average riskiness of the loans they insure has actually decreased, *i.e.,* credit scores increased, since late 2007.[62]

[58] Bureau of Labor Statistics, *News Release: The Employment Situation—July 2010.* August 8, 2010.

[59] S&P/Case Shiller. *Press Release,* July 27, 2010.

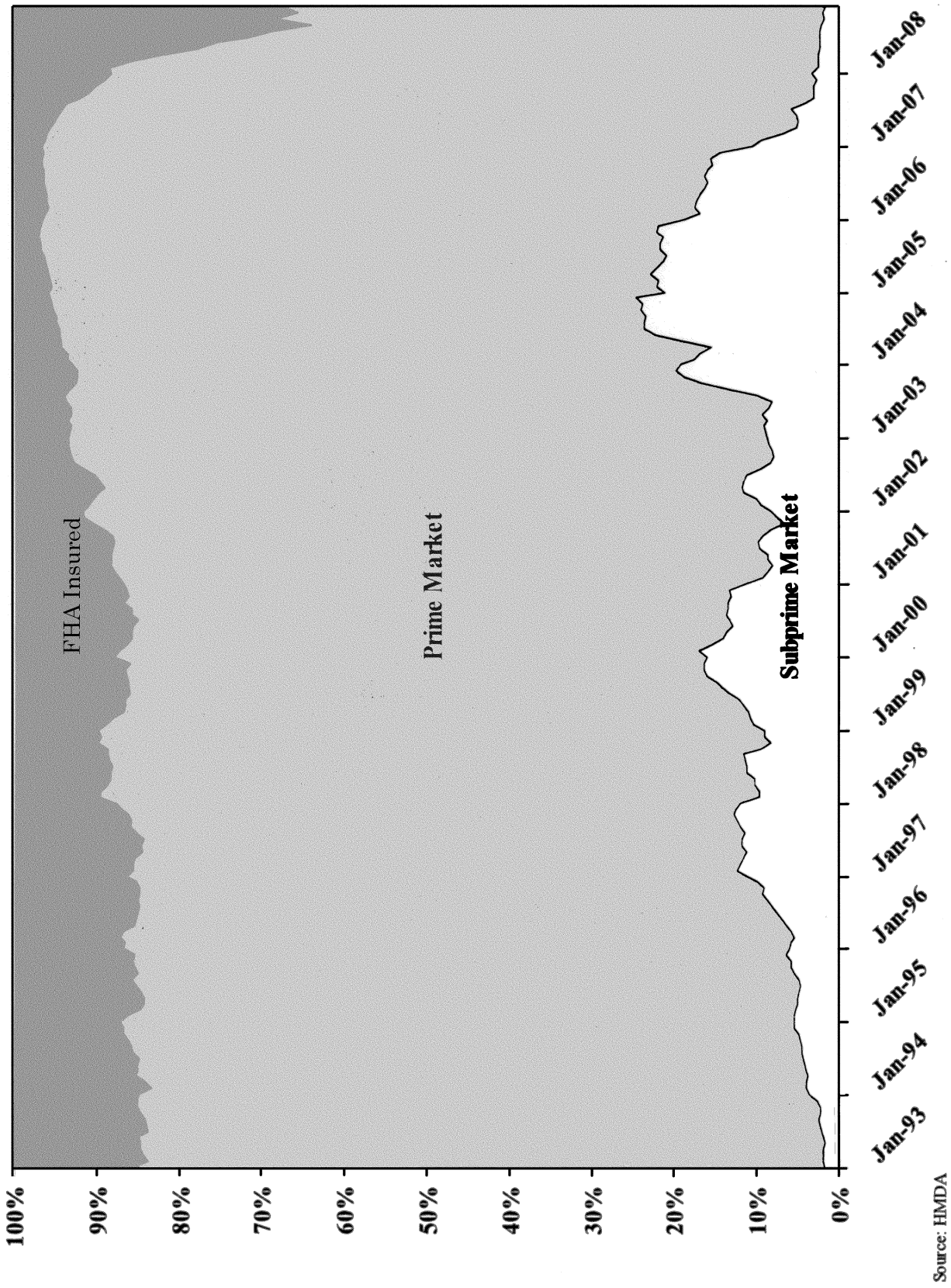
[60] Wells Fargo Securities Economics Group. *Existing Home Sales Slip in June,* July 22, 2010, p. 1.

[61] Wells Fargo Securities Economics Group. *Existing Home Sales Slip in June.* July 22, 2010, p. 1.

[62] *See* FHA Outlook, a monthly statistical summary of application insurance endorsement, delinquency and claim information on FHA single family programs. Available at *http://www.hud.gov/offices/hsg/comp/rpts/ooe/olmenu.cfm.*

Figure 1

Market Distribution by Mortgage Type




*Refinance Rate.* The share of the mortgage market that is from refinancing existing mortgages has an impact on the share of affordable refinance mortgages. Specifically, when the refinancing of mortgages is motivated by low interest rates, the market is dominated by higher income borrowers. In addition, a combination of depressed housing prices and high LTV ratios could disproportionately decrease the number

of low-income homeowners refinancing their mortgages.

*Manufactured Housing Loans.* During 2004 to 2008, 57 percent of manufactured housing loans were higher cost, according to the HMDA data. Only 8.5 percent of manufactured housing loans, with most being refinance loans, were from lenders who specialized in serving riskier borrowers. To adjust the market estimates of the housing goals to account for the effect from chattel loans on manufactured housing, FHFA weighted the average 2004 to 2008 manufactured housing contribution to the goals market estimates by 60 percent for the home purchase mortgage goals and 50 percent for the refinance mortgage goal. The market estimates were adjusted downward by that amount. This resulted in the market estimate for the low-income home purchase housing goal being adjusted by −0.9 percent, the very low-income home purchase housing goal by −0.3 percent, the low-income areas home purchase housing goal by −0.4 percent, and the low-income borrower refinance housing goal by −0.3 percent. The projected market estimates in Table 6 reflect these adjustments.

Given all of the influences on the housing and mortgage markets, the outlook for the 2010–2011 period remains guarded. In developing its Economic and Mortgage Outlook (*see* Table 5, below), FHFA uses an average of forecasted values for key economic indicators drawn from several industry sources.[63] On average, industry forecasters project the economy to rebound in 2010 and 2011, with real Gross Domestic Product (GDP) growing at a rate of 3.0 and 2.7 percent, respectively. Industry assessments of housing markets generally are conservative. The unemployment rate is expected to remain above eight percent during 2010 and 2011. As uncertainty in the job market remains, it will continue to have a negative impact on the housing market. "Employment stability and job growth are keys to a housing recovery. In addition to alleviating worker's fears about their next paycheck, improving employment measures help boost the confidence of households that are considering buying a home."[64] Mortgage interest rates are currently dependent on federal policies, somewhat independent of the federal funds rate and influenced by the economic situation in Europe. The Federal Open Market Committee is committed to a low federal funds rate policy (at 0 to 0.25 percent) as it "continues to anticipate that economic conditions, including low rates of resource utilization, subdued inflation trends, and stable inflation expectations, are likely to warrant exceptionally low levels of the federal funds rate for an extended period."[65] For the 2010 and 2011 period, the forecasts polled by FHFA show that interests rates will remain near recent levels.

**Table 5**

**Economic and Mortgage Market Outlook**

| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|---|---|---|
| **Real GDP Growth** | 3 6% | 3.1% | 2.7% | 1.9% | 0.0% | -2.6% | 3.0% | 2.7% |
| **Unemployment Rate** | 5 5% | 5.1% | 4.6% | 4.6% | 5.8% | 9.3% | 9.6% | 9.1% |
| **Inflation Rate** | 2.7% | 3.4% | 3.2% | 2.9% | 3.8% | -0.4% | 1.7% | 1.3% |
| **Core Inflation Rate**[1] | 1.8% | 2.2% | 2.5% | 2.3% | 2.3% | 1.7% | 1.0% | 1.0% |
| **1-Year Treasury Yield** | 1.9% | 3.6% | 4.9% | 4.5% | 1.8% | 0.5% | 0.3% | 0.8% |
| **10-Year Treasury Yield** | 4.3% | 4.3% | 4.8% | 4.6% | 3.7% | 3.3% | 3 4% | 3.5% |
| **30-Year Mortgage Fixed Rate**[2] | 5.8% | 5.9% | 6.4% | 6.3% | 6.0% | 5.0% | 4.8% | 5.1% |
| **Housing Starts**[3] | 1,951 | 2,071 | 1,810 | 1,341 | 899 | 554 | 620 | 857 |
| **Home Sales (New and Existing)**[3] | 7,929 | 8,356 | 7,563 | 6,437 | 5,375 | 5,535 | 5,465 | 5,934 |
| **Single-Family Originations**[4] | $2,772 | $3,026 | $2,725 | $2,306 | $1,508 | $1,815 | $1,501 | $1,249 |
| **Change in Housing Prices**[5] | 9.3% | 9.3% | 3.5% | -1.2% | -8.3% | -1.3% | -2.6% | 0.4% |
| **Housing Affordability Index**[6] | 126 | 114 | 108 | 117 | 139 | 171 | 170 | 149 |
| **Refinance Mortgage Share** | 54% | 49% | 48% | 51% | 51% | 65% [p] | 62% | 40% |
| **FHA Home Purchase Market Share** | 7% | 4% | 4% | 6% | 25% | 30% [p] | 29% | 25% |
| **Median Sales Price - New Homes**[7] | $218 | $234 | $243 | $244 | $230 | $215 | $214 | $215 |
| **Median Sales Price - Existing Homes**[7] | $193 | $218 | $222 | $217 | $197 | $173 | $171 | $173 |

Note: 2010-2011 values are forecasted values. Forecasts are an average forecast of Mortgage Bankers Association (MBA), Fannie Mae, Freddie Mac, National Association of Realtors, Wells Fargo, PNC Financial,the National Association of Home Builders, Standard and Poor's, the Wall Street Journal Survey, the Conference Board and the Federal Open Market Committee.

[1]Annual change in Core CPI (less food and energy)

[2]Freddie Mac, Primary Mortgage Market Survey

[3]Thousands of units

[4]FHFA and MBA, Billions of dollars

[5]FHFA House Price Index, Purchase Only (4th quarter over 4th quarter change)

[6]National Association of Realtors

[7]Thousands of dollars

[a]Advance estimate.

[p]Preliminary estimate.

[63] These forecasts include those by the Mortgage Bankers Association, Fannie Mae, Freddie Mac, the National Association of Realtors, Wells Fargo, Wall Street Journal Forecast Survey, PNC Financial, National Association of Home Builders, Standard and Poor's, The Conference Board and The Federal Reserve Board's Federal Open Market Committee.

[64] National Association of Home Builders. *Eye on the Economy—Private Sector Job Growth Slows in May,* June 10, 2010.

[65] Board of Governors of the Federal Reserve System. *Press Release of the Federal Open Market Committee,* June 23, 2010.

FHFA's estimates of the market performance for the two single-family owner-occupied home purchase housing goals and one subgoal, and the refinancing mortgage housing goal, are provided in Table 6. For 2010 and 2011, FHFA estimates that the low-income and very low-income borrower shares of the home purchase mortgage market will be 27 percent and 8 percent, respectively. Comparing these market estimates in Table 6 with the corresponding estimates in Table 6 of the proposed rule shows that the estimates have not changed. The estimated share of goal-qualifying mortgages in low-income areas in the home purchase mortgage market, excluding designated disaster areas, in 2010 and 2011, remained at the 13 percent of home purchase mortgages estimate that was published in the proposed rule. While changes in expected economic conditions had an impact on the market for these three housing goals, that impact is insignificant. The market for the low-income areas housing goal is influenced by the level of home sales. During periods when home sales are increasing, a smaller share of the additional home sales take place in low-income areas. Home sales are expected to fall slightly in 2010 and then rebound in 2011.[66]

**Table 6**

**Enterprise Single-Family Housing Goals**
**Market Estimates 2009 - 2011**

| Year [1] | Low-Income Borrower Home Purchase Goal | Very Low-Income Borrower Home Purchase Goal | Low-Income Area Home Purchase Subgoal | Low-Income Borrower Refinance Goal |
|---|---|---|---|---|
| 2004 | 27.3% | 6.6% | 16.7% | 28.1% |
| 2005 | 24.4% | 5.7% | 15.3% | 26.1% |
| 2006 | 24.2% | 5.9% | 15.8% | 24.8% |
| 2007 | 26.1% | 6.2% | 16.2% | 24.3% |
| 2008 | 25.5% | 6.5% | 14.3% | 23.4% |
| 2009 [2] | 27.4% ± 1.1% | 8.1% ± 0.6% | 11.7% ± 0.7% | 20.1% ± 3.7% |
| 2010 [2] | 27.7% ± 2.4% | 8.6% ± 1.2% | 12.7% ± 1.8% | 18.1% ± 7.4% |
| 2011 [2] | 26.0% ± 4.8% | 8.1% ± 2.3% | 13.6% ± 3.5% | 20.4% ± 10.3% |

[1] Historical market performance is based historical HMDA data for first-lien, conventional, ARRA-equivalent conforming limit loans, excluding higher-cost and HOEPA loans.

[2] Estimated (95% confidence)

The refinance share of the market, as measured by the Mortgage Bankers Association, was 65 percent during the first quarter of 2010. With interest rates projected to be at historical lows during the remainder of 2010, there is real potential for refinance rates to be higher than currently anticipated. With a projected refinance rate of 62 percent in 2010 (down from 65 percent in 2009), FHFA estimates that 18 percent of refinance mortgages will be made to low-income borrowers in 2010. The refinance rate is expected to fall to 40 percent in 2011, resulting in an estimate that the low-income borrower mortgage share of the refinance mortgage market will be 20 percent in 2011.

To arrive at these estimates, FHFA used econometric methods to extend the trends of the market performance for each goal, based on a monthly time series database provided by the Federal Financial Institutions Examination Council (FFIEC) and the Federal Reserve Board. For the low-income areas goal, this model produced only the market estimates for the subgoal. The remainder of the market estimates for this goal relates to the designated disaster areas. FHFA estimates that 11 percent of home purchase mortgages originated in 2010 will qualify for the low-income areas goal because the properties associated with these mortgages are located in designated disaster areas that are not already classified as low-income or high minority. The methodology used in FHFA's analysis of the mortgage market for 2010 and 2011 is contained in a document entitled "Market Estimation Model for the 2010 and 2011 Enterprise Single-Family Housing Goals," which is available at *http://www.fhfa.gov.*

FHFA used all relevant information when determining the benchmark levels for the 2010 and 2011 housing goals. While the tightening of underwriting standards is not included in the market estimates calculation, it was considered in the determination of the benchmark levels. FHFA attempts to use the most current data possible when estimating market size, including information from the Monthly Interest Rate Survey (MIRS) to extend HMDA goal performance data. To extend the series for the three single-family home purchase goals through 2009, FHFA supplements the HMDA series with estimated market series of goal-qualifying shares provided by Freddie Mac that are based on MIRS data. Guidance for calculating market

[66] The average industry January forecast for home sales during 2010 and 2011 was 5.9 and 6.5 million units respectively. This is compared to the 5.5 and 6.0 million units from Table 5.

size using historical HMDA data is provided in the "Market Estimation Model for the 2010 and 2011 Enterprise Single-Family Housing Goals" published by FHFA. The market estimation methodology for estimating current and future market size is provided in that market estimation model document. As noted above, FHFA will use the Federal Reserve Board's new guidelines of 150 basis points or more above APOR to identify higher-cost loans.

7. Financial Condition of the Enterprises

The financial performance of both Enterprises is dominated by credit-related expenses and losses stemming principally from purchases of PLS and purchases and guarantees of mortgages originated in 2006 and 2007. Since the establishment of the conservatorship for the Enterprises in September 2008, the combined losses of the two Enterprises depleted their capital and required them to draw from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements. Fannie Mae has drawn $85.1 billion and Freddie Mac has drawn $63.1 billion in Treasury support under the Senior Preferred Stock Purchase Agreements, over $148 billion in total.

As discussed above, FHFA's duties as conservator require the conservation and preservation of the assets of the two Enterprises. While reliance on the Treasury Department's backing will continue until legislation produces a final resolution to the Enterprises' future, FHFA is monitoring the activities of the Enterprises to: (a) Limit their risk exposure by avoiding new lines of business; (b) ensure profitability in the new book of business without deterring market participation or hindering market recovery; and (c) minimize losses on the mortgages already on the books. Given the importance of the Enterprises to the housing market, any goal-setting must be closely linked to putting the Enterprises in sound and solvent condition. Over the long term, such actions will assist homeowners and neighborhoods while saving the Enterprises money. In 2009, FHFA adjusted the Enterprises' housing goal levels to align them with safe and sound practices and market reality, and the housing goals requirements for 2010 and 2011 must be similarly aligned.

*D. Single-Family Housing Goal Levels*

Based on the factors described above, § 1282.12 of the final rule establishes the benchmark levels for the single-family housing goals for 2010 and 2011 as follows:

*Housing goal for low-income families.* The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for low-income families is 27 percent of the total number of such mortgages purchased by that Enterprise, as in the proposed rule.

*Housing goal and subgoal for families in low-income areas.* The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for families in low-income areas will be set annually by notice from FHFA. The benchmark level will be based on the benchmark level for the low-income areas subgoal, plus an adjustment factor that reflects the incremental percentage share that mortgages for low- and moderate-income families in designated disaster areas had in the most recent year for which data is available. The benchmark level of the annual subgoal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for families in low-income census tracts and for low- and moderate-income families in minority census tracts is 13 percent of the total number of such mortgages purchased by that Enterprise.

*Housing goal for very low-income families.* The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for very low-income families is 8 percent of the total number of such mortgages purchased by that Enterprise, as in the proposed rule.

*Housing goal for refinancing mortgages.* The benchmark level of the annual goal for each Enterprise's purchases of refinancing mortgages on owner-occupied single-family housing for low-income families is 21 percent of the total number of such mortgages purchased by that Enterprise, an adjustment downward from the 25 percent level in the proposed rule to reflect current market conditions.

*E. Analysis of Factors for Multifamily Housing Goals*

Section 1333(a)(4) of the Safety and Soundness Act, as amended by HERA, requires FHFA to consider the following six factors in setting multifamily special affordable housing goals:

(1) National multifamily mortgage credit needs and the ability of the Enterprise to provide additional liquidity and stability for the multifamily mortgage market;

(2) The performance and effort of the Enterprise in making mortgage credit available for multifamily housing in previous years;

(3) The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

(4) The ability of the Enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;

(5) The availability of public subsidies; and

(6) The need to maintain the sound financial condition of the Enterprise.[67]

FHFA's analysis of each of the factors, which has been updated since the proposed rulemaking, is set forth below.

1. National Multifamily Mortgage Credit Needs

At the onset of the mortgage credit crisis, traditional sources of multifamily credit, primarily commercial mortgage-backed securities (CMBS), life insurance companies, commercial banks, and thrifts, significantly reduced lending or stopped lending completely. This contraction left Freddie Mac and Fannie Mae as the principal sources of financing for most multifamily owners and investors. Although FHA has increased significantly its non-healthcare, non-new construction endorsements in fiscal year 2010 as compared to fiscal year 2009, it remains a relatively small player in the multifamily refinance market. Data on initial endorsements for the first eight months of fiscal year 2010 show more than a four-fold increase in initial FHA endorsements of non-healthcare, non-new construction multifamily loans to over $3.7 billion.[68] While this number is much less than Enterprise purchases over the same period, FHA has managed to increase its business, in part, because its underwriting parameters are less stringent than those of the Enterprises.[69] Life insurance companies appear to be returning to the multifamily market. According to data from the MBA, life insurance companies have increased originations of commercial property loans, including multifamily loans, by

[67] 12 U.S.C. 4563(a)(4).

[68] Source: FHA Multifamily Data Base available at: *http://www.hud.gov/offices/hsg/mfh/fhamie/iecompiled10.pdf.*

[69] FHA permits LTVs up to 85 percent and DSCR ratios as low as 1.176 on its primary market rent refinance program Section 223(f). This compares to Enterprise maximum LTVs of 80 percent and a minimum DSCR of 1.25. Earlier in 2010, FHA announced plans to raise the DSCR for Section 223(f) loans to 1.2 from 1.176.

131 percent in the first quarter of 2010, compared to the same period in 2009.[70]

With multifamily property prices having fallen by almost 31 percent from the third quarter of 2008 to the first quarter of 2010,[71] many properties that would have been eligible for refinance through Enterprise programs lack enough equity to meet Enterprise loan underwriting standards. The decline in multifamily property prices will adversely affect owners who financed with interest-only loans over the past decade. As these loans become due, properties with non-amortizing loans may not have sufficient equity to counter the effects of declining property values.

Demand for new multifamily housing credit has also waned due to the credit crunch and the existing oversupply of multifamily units. According to the U.S. Census Bureau, multifamily housing starts plummeted by two-thirds from April 2008 to April 2010.[72] Sales of multifamily properties are far below normal levels in part because owners are waiting for property values to stabilize. Many other multifamily property owners, unable to refinance, have been granted extensions by lenders, or in the case of loans securitized through CMBS, by the servicer. On the positive side, the maturations of multifamily loans acquired by the Enterprises and backing CMBS issuances are unlikely to begin to increase significantly until after 2010.

In the CMBS portion of the multifamily market, while the Enterprises have primarily purchased the highest-rated CMBS tranches, they may be indirectly affected by increasing CMBS delinquency rates. According to May 2010 data released by TREPP,[73] delinquencies on multifamily properties financed by CMBS issuances rose to 13.34 percent from 5.17 percent a year earlier. As properties collateralizing CMBS issuances become delinquent, foreclosures and workouts will increase, further depressing prices of all commercial properties, including multifamily properties. This will make refinancing maturing multifamily loans more challenging for the Enterprises.

While multifamily delinquencies remain relatively low for both Fannie Mae[74] and Freddie Mac,[75] there is growing concern among multifamily property owners and investors about properties that are overleveraged or generating negative cash flows.

2. Past Performance

HUD established dollar-based multifamily housing subgoals for the Enterprises for the years 1996 through 2008. HERA extended the 2008 subgoals through 2009, subject to review by FHFA, and FHFA increased these 2009 subgoals modestly, from $5.49 billion to $6.56 billion for Fannie Mae, and from $3.92 billion to $4.60 billion for Freddie Mac.

HERA changed the structure of the multifamily goals for 2010 and beyond. The multifamily housing subgoals for 2009 were set in terms of units for very low-income families and low-income families in low-income areas. The scope of the goals is broader for 2010–11, covering units affordable to all low-income families (those with incomes no greater than 80 percent of AMI), regardless of property location.

Section 1333(a)(2) of the Safety and Soundness Act, as amended by HERA, requires the Director to establish "additional requirements for the purchase by each enterprise of mortgages on multifamily housing that finance dwelling units affordable to very low-income families," with "very low-income families" defined as those with incomes no greater than 50 percent of AMI. To implement this provision, consistent with the proposed rule, FHFA is establishing a multifamily subgoal for very low-income families.

Section 1333(a)(3) of the Safety and Soundness Act, as amended by HERA, provides that the Director shall require each Enterprise to report on its purchases of mortgages on multifamily housing "of a smaller or limited size that is affordable to low-income families." The provision defines small multifamily projects as those containing 5 to 50 units or as those with mortgages of up to $5,000,000. The Director may adjust the definition to include projects containing different numbers of units or with mortgages of different amounts. The provision further states that the Director may establish additional requirements related to such units by regulation.

As in the proposed rule, FHFA is defining smaller multifamily properties as those containing 5 to 50 units, which is consistent with industry standards. FHFA already requires reporting by the Enterprises on purchases of mortgages on such properties.

*Multifamily special affordable housing goals.* Both Enterprises played major roles in funding multifamily units for low-income families between 2001 and 2009, as shown in Table 7. Fannie Mae financed an average of 410,000 such units over this period, peaking at 599,000 units in 2003, while Freddie Mac financed an average of 331,000 units, peaking at 493,000 units in 2007. However, as discussed elsewhere in the final rule, the Enterprises followed different approaches to the multifamily market, with Freddie Mac relying to a significant extent on the purchase of CMBS, while Fannie Mae depended to a greater extent on the direct purchase of multifamily loans originated by its Delegated Underwriting and Servicing (DUS) lenders. Data on low-income multifamily units financed, excluding CMBS purchases, are shown in the last two columns of Table 7.

As indicated in Table 7, Fannie Mae's financing of low-income multifamily units fell by 16 percent in 2008, from 542,000 units in 2007 to 456,000 units in 2008, and by an additional 46 percent in 2009, to 235,000 units. Such financing fell more sharply at Freddie Mac, by 44 percent, from 493,000 units in 2007 to 276,000 units in 2008, and by an additional 40 percent in 2009, to 167,000 units. This difference reflects the drop in CMBS purchases by Freddie Mac. As a result, Freddie Mac's financing of such units was 61 percent of Fannie Mae's financing in 2008, the lowest ratio of the period.

[68] Source: FHA Multifamily Data Base available at: *http://www.hud.gov/offices/hsg/mfh/fhamie/iecompiled10.pdf.*

[69] FHA permits LTVs up to 85 percent and DSCR ratios as low as 1.176 on its primary market rent refinance program Section 223(f). This compares to Enterprise maximum LTVs of 80 percent and a minimum DSCR of 1.25. Earlier in 2010, FHA announced plans to raise the DSCR for Section 223(f) loans to 1.2 from 1.176.

[70] "MBA Study: First Quarter 2010 Commercial/Multifamily Mortgage Originations Increase from Year Earlier, Though Levels Remain Low, 5/18/2010", available at: *http://www.mbaa.org/NewsandMedia/PressCenter/72890.htm.*

[71] Moody's/Real CPPI Report May 2010, available at: *http://web.mit.edu/cre/research/credl/rca.html.*

[74] Fannie Mae: *Monthly Summary, April 2010,* Table 9.

[75] Freddie Mac: *Monthly Volume Summary: April 2010,* Table 6.

## Table 7

## GSE Funding of Low-Income Multifamily Units, 2001-09

**(Performance if 2010 goal had been in effect, based on units or dollar volume)**

| Performance Measure | Year of Purchase | GSE (Including CMBS)* FNM | GSE (Including CMBS)* FRE | GSE (Including CMBS)* Ratio | GSE (Excl. CMBS)' FNM | GSE (Excl. CMBS)' FRE |
|---|---|---|---|---|---|---|
| Number of Low-Income Multifamily | 2009 | 235,199 | 167,026 | 0.71 | 234,492 | 166,680 |
| | 2008 | 456,377 | 276,267 | 0.61 | 446,797 | 265,699 |
| | 2007 | 542,221 | 492,630 | 0.91 | 391,768 | 297,711 |
| | 2006 | 441,131 | 423,221 | 0.96 | 311,088 | 173,331 |
| | 2005 | 349,423 | 387,241 | 1.11 | 347,228 | 162,707 |
| | 2004 | 337,438 | 316,150 | 0.94 | 334,219 | 229,468 |
| | 2003 | 598,641 | 409,746 | 0.68 | 594,503 | 332,849 |
| | 2002 | 338,735 | 245,942 | 0.73 | 336,895 | 244,494 |
| | 2001 | 390,048 | 256,540 | 0.66 | 388,499 | 253,885 |
| | Average, 2001-09 | 409,913 | 330,529 | 0.81 | 376,165 | 236,314 |
| Dollar Volume (in billions) of Low-Income Multifamily Units Financed | 2009 | $10.28 | $7.23 | 0.70 | $10.26 | $7.22 |
| | 2008 | $19.53 | $12.83 | 0.66 | $19.03 | $12.29 |
| | 2007 | $26.97 | $24.18 | 0.90 | $18.04 | $12.68 |
| | 2006 | $19.34 | $19.18 | 0.99 | $12.71 | $7.70 |
| | 2005 | $13.30 | $18.34 | 1.38 | $13.23 | $7.08 |
| | 2004 | $11.94 | $11.99 | 1.00 | $11.85 | $8.66 |
| | 2003 | $20.63 | $13.14 | 0.64 | $20.48 | $10.29 |
| | 2002 | $10.83 | $8.57 | 0.79 | $10.77 | $8.50 |
| | 2001 | $11.98 | $8.21 | 0.68 | $11.90 | $8.18 |
| | Average, 2001-09 | $16.09 | $13.74 | 0.85 | $14.25 | $9.18 |

***GSE: FNM = Fannie Mae, FRE = Freddie Mac. Units financed by the acquisition of multifamily commercial mortgage-backed securities (CMBS) are included in first set of figures, but excluded from second set of figures.**

**Source: FHFA analysis of GSE loan-level data. "Low-income" refers to multifamily rental units affordable to families with incomes no greater than 80 percent of Area Median Income (AMI).**

**Figures including CMBS have been corrected from those in Table 7 on page 9053 of the 2/26/10 proposed rule.**

*Very low-income multifamily subgoals.* HERA revised the definition of "very low-income" families as it pertains to the Enterprises' housing goals. Under the housing goals established by HUD for 1993–2008 and as revised by FHFA for 2009, "very low-income" referred to borrowers with incomes no greater than 60 percent of AMI, or for rental units, to units affordable to families with incomes in this range, with adjustments for family size. This definition was changed by HERA to refer to borrowers with incomes no greater than 50 percent of AMI, or for rental units, to units affordable to families with incomes in this range, with adjustments for family size. The new definition of "very low-income families" is consistent with that used in some other housing programs.

Enterprise financing of rental units for very low-income families over the 2001–09 period is reported in Table 8. On average, Fannie Mae funded 92,000 such units each year and Freddie Mac funded 74,000 such units. The same general pattern prevailed over time as that shown in Table 7 between 2007 and 2009, with a significant drop in funding by Fannie Mae (49 percent) and a substantial drop by Freddie Mac (80 percent). As a result, the number of such units financed by Freddie Mac in 2009 was only 33 percent of the number financed by Fannie Mae, the lowest ratio of this period.

**Table 8**

**GSE Funding of Very Low-Income Multifamily Units, 2001-09**

**(Performance if 2010 goal had been in effect, based on units or dollar volume)**

| Performance Measure | Year of Purchase | GSE (Including CMBS)* | | | GSE (Excl. CMBS)' | |
|---|---|---|---|---|---|---|
| | | FNM | FRE | Ratio | FNM | FRE |
| Number of Very Low-Income Multifamily Units Finance | 2009 | 60,765 | 20,302 | 0.33 | 60,466 | 20,302 |
| | 2008 | 97,045 | 46,043 | 0.47 | 95,308 | 42,835 |
| | 2007 | 118,159 | 102,472 | 0.87 | 88,369 | 59,490 |
| | 2006 | 124,822 | 136,140 | 1.09 | 86,894 | 34,256 |
| | 2005 | 95,573 | 103,501 | 1.08 | 94,733 | 31,339 |
| | 2004 | 79,038 | 71,579 | 0.91 | 78,114 | 45,735 |
| | 2003 | 122,098 | 98,794 | 0.81 | 120,271 | 76,280 |
| | 2002 | 69,076 | 38,258 | 0.55 | 68,391 | 37,254 |
| | 2001 | 57,044 | 45,206 | 0.79 | 56,265 | 45,048 |
| | Average, 2001-09 | 91,513 | 73,588 | 0.80 | 83,201 | 43,615 |
| Dollar Volume (in billions) of Very Low-Income Multifamily Units Financed | 2009 | $1.99 | $0.51 | 0.26 | $1.98 | $0.51 |
| | 2008 | $3.15 | $1.44 | 0.46 | $3.09 | $1.32 |
| | 2007 | $4.21 | $3.77 | 0.90 | $3.06 | $2.16 |
| | 2006 | $4.09 | $4.56 | 1.11 | $2.75 | $1.19 |
| | 2005 | $2.79 | $3.84 | 1.38 | $2.77 | $1.06 |
| | 2004 | $2.07 | $1.96 | 0.95 | $2.05 | $1.25 |
| | 2003 | $3.16 | $2.32 | 0.73 | $3.11 | $1.75 |
| | 2002 | $1.56 | $0.97 | 0.62 | $1.54 | $0.92 |
| | 2001 | $1.26 | $0.92 | 0.73 | $1.24 | $0.92 |
| | Average, 2001-09 | $2.70 | $2.25 | 0.84 | $2.40 | $1.23 |

***GSE: FNM = Fannie Mae, FRE = Freddie Mac. Units financed by the acquisition of multifamily commercial mortgage-backed securities (CMBS) are included in first set of figures, but excluded from second set of figures.**

**Source: FHFA analysis of GSE loan-level data. "Very Low-income" refers to multifamily rental units affordable to families with incomes no greater than 50 percent of Area Median Income (AMI).**

**Figures including CMBS have been corrected from those in Table 8 on page 9054 of the 2/26/10 proposed rule.**

*Financing of low-income units in small multifamily properties.* As discussed above, HERA recognizes the important role played by small multifamily housing as a source of affordable rental housing. According to the 2007 American Housing Survey (AHS), multifamily properties containing 5–49 units constituted 77 percent of all multifamily units and 74 percent of multifamily units constructed in the previous 4 years. Other sources indicate that a smaller, but still significant, share of multifamily units are located in small multifamily properties.[76] HERA requires reporting of the Enterprises' role in this market with regard to units affordable to low-income families, and such data is reported in Table 9.

Both Enterprises increased their financing of low-income small multifamily units between 2001 and 2003, from 24,000 units to 155,000 units for Fannie Mae, and from 44,000 units to 139,000 units for Freddie Mac. This increase was motivated at least in part by the "bonus points" that HUD gave for financing goal-qualifying units in small multifamily properties over the 2001–03 period. Under these "bonus points," each goal-qualifying unit counted twice in the numerator and once in the denominator in calculating goal performance.

As indicated in Table 9, both Enterprises decreased their roles in the small multifamily market after the expiration of HUD's "bonus points" in 2004. Fannie Mae financed an average of 49,000 units for 2004–07, while the comparable average for Freddie Mac was 24,000 such units.

Since 2007, both Enterprises' roles in this market have fallen significantly. Fannie Mae's purchases of mortgages financing low-income units in small multifamily properties fell from 65,000 units in 2007 to 44,000 units in 2008 and 13,000 units in 2009, a combined decrease of 79 percent. The decline was even sharper for Freddie Mac, from 24,000 units in 2007 to 2,100 units in 2008 and only 528 units in 2009, a combined decrease of 98 percent.

Although the Safety and Soundness Act requires FHFA to consider the past performance of the Enterprises in establishing the multifamily housing goals, current market conditions suggest that many fewer units are likely to be readily available for purchase in a safe and sound manner in 2010 and 2011. Measuring the multifamily goals as was

[76] *American Housing Survey for the United States: 2007,* U.S. Department of Housing and Urban Development and U.S. Department of Commerce, Bureau of the Census, September 2008, Table 1A–1, page 1.

done previously would ignore the steep fall in multifamily property values and high vacancy rates, among other factors.

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**Table 9**

**GSE Funding of Low-Income Units in Small Multifamily Properties, 2001-09**

**("Small multifamily properties" are defined as those with 5-50 units)**

| Performance Measure | Year of Purchase | GSE (Including CMBS)* | | | GSE (Excl. CMBS)' | |
|---|---|---|---|---|---|---|
| | | FNM | FRE | Ratio | FNM | FRE |
| Number of Low-Income Units in Small Multifamily Properties Financed | 2009 | 13,466 | 528 | 0.04 | 13,417 | 528 |
| | 2008 | 43,979 | 2,078 | 0.05 | 42,668 | 1,682 |
| | 2007 | 65,348 | 23,744 | 0.36 | 58,931 | 2,147 |
| | 2006 | 44,816 | 23,471 | 0.52 | 40,587 | 773 |
| | 2005 | 53,842 | 11,408 | 0.21 | 53,746 | 1,704 |
| | 2004 | 33,085 | 37,063 | 1.12 | 33,020 | 34,211 |
| | 2003** | 155,105 | 138,858 | 0.90 | 155,025 | 134,616 |
| | 2002** | 42,394 | 35,340 | 0.83 | 42,350 | 35,161 |
| | 2001** | 23,852 | 44,339 | 1.86 | 23,806 | 44,301 |
| | Average, 2001-09 | 52,876 | 35,203 | 0.67 | 51,506 | 28,347 |
| Dollar Volume (in billions) of Low-Income Units in Small Multifamily Properties Financed | 2009 | $0.68 | $0.02 | 0.04 | $0.68 | $0.02 |
| | 2008 | $2.09 | $0.12 | 0.06 | $2.02 | $0.10 |
| | 2007 | $3.33 | $1.54 | 0.46 | $2.79 | $0.11 |
| | 2006 | $2.20 | $1.04 | 0.47 | $1.93 | $0.03 |
| | 2005 | $2.23 | $0.62 | 0.28 | $2.23 | $0.08 |
| | 2004 | $1.30 | $1.31 | 1.01 | $1.30 | $1.18 |
| | 2003** | $6.14 | $4.59 | 0.75 | $6.14 | $4.42 |
| | 2002** | $1.44 | $1.29 | 0.90 | $1.44 | $1.29 |
| | 2001** | $0.67 | $1.41 | 2.10 | $0.67 | $1.40 |
| | Average, 2001-09 | $2.23 | $1.33 | 0.59 | $2.13 | $0.96 |

***GSE: FNM = Fannie Mae, FRE = Freddie Mac. Units financed by the acquisition of multifamily commercial mortgage-backed securities (CMBS) are included in first set of figures, but excluded from second set of figures.**

****For 2001-03, HUD "bonus points" (double credit) for funding goal-qualifying units in small multifamily properties were in effect.**

**Source: FHFA analysis of GSE loan-level data. "Low-income" refers to multifamily rental units affordable to families with incomes no greater than 80 percent of Area Median Income (AMI).**

**Figures including CMBS have been corrected from those in Table 9 on page 9055 of the 2/26/10 proposed rule.**

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3. Market size

The size of the overall multifamily mortgage market is likely to remain relatively unchanged in 2010 as compared to 2009, and the dollar amount of multifamily loans financed in 2010 will likely be similar to that of 2009, approximately $40–45 billion. Poor property fundamentals, especially declines in property value, will affect the type of properties and owners that can access multifamily credit. If the multifamily market begins to recover in 2011, multifamily originations may increase. Projections of such activity, however, are uncertain. For purposes of this rulemaking, the multifamily goals for both 2010 and 2011 are based on the overall multifamily market for 2009 and Enterprise multifamily performance in recent years, and on current multifamily market conditions. As in prior years, the multifamily goals are set separately for each Enterprise. Unlike prior years, the multifamily goals are measured in units rather than dollar volume.

The proportion of multifamily affordable units available for financing in 2010 and 2011 will likely be below historical levels due to weakness in the multifamily housing market. Steep declines in multifamily property prices since mid-2007 have caused a significant loss of equity for owners, many of whom can no longer qualify for Enterprise financing without placing substantial cash into the property. The loss of equity for most owners has meant that only financially strong properties and borrowers will qualify for Enterprise financing. These properties often have a much lower proportion of affordable units.

Another factor that will likely constrain Enterprise multifamily loan production in 2010 and 2011 will be the relatively small dollar amount of loans maturing in the Enterprise portfolios in 2010 and 2011. The MBA expects only $26 billion in total maturing multifamily mortgages in 2010. However, the volume of maturing loans is expected to increase from 2011 onward.[77]

For well over a decade, Freddie Mac relied upon purchases of CMBS and structured deals involving large portfolios of affordable multifamily loans to meet applicable affordable housing goals. Beginning in 2006 and 2007, CMBS made up a significant portion of Fannie Mae's affordable multifamily purchases. These sources of affordable units are now either unavailable or do not meet Enterprise standards. Therefore, based on the factors discussed above, multifamily affordable purchases in the very low-income category are near historical lows in 2009 overall. The effect, though, will be more pronounced at Freddie Mac. The percentage of very low-income multifamily purchases in 2010 for Freddie Mac will likely be below its average for 2004 to 2008, while Fannie Mae will likely have a very low-income purchase volume near its average for the past several years. As discussed elsewhere in this final rule, CMBS units will no longer receive credit towards the housing goals.

4. Ability of the Enterprise To Lead the Market in Making Multifamily Mortgage Credit Available

As described above in the context of the single-family goals, Congress in enacting the Safety and Soundness Act was concerned that the Enterprises were lagging behind market originations of mortgages for the benefit of low- and moderate-income households. FHFA has been cognizant of that concern in setting goals for the Enterprises.

With the current credit crisis negatively affecting the commercial real estate market, the Enterprises became market leaders by default. The disciplined underwriting and credit standards they bring to the industry have contributed to relatively low delinquency rates. Compared to the industry, the Enterprises have relatively conservative multifamily underwriting parameters. Although showing signs of improvement, the fundamentals of the multifamily real estate market are still weak (*e.g.*, high vacancy rates, stagnant rents and falling property values). As a result, the Enterprises have enhanced their credit standards to reduce risk exposure, which has meant that owners of the strongest performing properties are more likely to obtain credit from lenders selling to the Enterprises. As noted previously, Fannie Mae and Freddie Mac have recently composed a larger than usual portion of the multifamily market. For example, while Fannie Mae estimates that its share of the multifamily market ranged from 21–28 percent in the period from 2004 to 2007, its multifamily market share was 47 percent in 2009. In the years 2010–2011, the Enterprises' share of the market will likely not be as large because of renewed competition from other multifamily market players, including life insurance companies and banks, and declining multifamily market fundamentals.

5. Availability of Public Subsidies

Public subsidies for multifamily housing have been affected by the mortgage credit crisis. Low-income housing tax credits (LIHTCs), an important source of equity for new low-income housing, have fallen in value. However, on October 19, 2009, FHFA announced, in conjunction with the Treasury Department and HUD, an initiative to support state and local housing finance agencies (HFAs) through a new bond purchase program to support new lending by HFAs, and a temporary credit and liquidity program to improve the access of HFAs to liquidity for outstanding HFA bonds. Fannie Mae and Freddie Mac each played critical roles in this program, which helped support low mortgage rates and expand resources for low- and middle-income borrowers who want to purchase or rent homes that are affordable over the long term.

The Enterprises actively purchase mortgages on properties with HUD Section 8 Housing Assistance Plan (HAP) contracts. Newly constructed or rehabilitated properties usually receive forward commitments from the Enterprises with part of the new equity coming from LIHTCs. The remaining properties are refinancings where the property owners sign long-term use agreements with HUD and receive a HAP contract in return. The Enterprises can also assist state and local HFAs by credit enhancing HFA bonds, and by offering permanent financing for properties rehabilitated through the Neighborhood Stabilization Program and other HUD grants.

6. Financial Condition of Enterprises

The financial performance of both Enterprises, including the establishment of the conservatorship for the Enterprises in September 2008, is discussed in more detail above. FHFA has considered the multifamily housing goals in light of the importance of the Enterprises to the housing market and in light of FHFA's duties as conservator to conserve and preserve the assets of the Enterprises. FHFA has aligned the multifamily housing goal levels for 2010 and 2011 with safe and sound practices and market reality.

*F. Multifamily Housing Goal Levels*

As a result of the changes in HERA, the final rule establishes the multifamily affordable housing goals for each Enterprise separately from the single-family housing goals beginning in 2010. Qualifying multifamily units previously had been included with single-family affordable purchases in the overall goals. Additional requirements for multifamily housing were imposed under a multifamily special affordable subgoal. Consistent with the proposed rule, the multifamily affordable goals for each Enterprise in the final rule are established in terms of low-income and very low-income units financed annually.

Regarding the setting of multifamily goals, one commenter noted that there does not appear to be a convenient measure of the market, particularly for very-low income families. The commenter suggested using HMDA data to calculate the size of the small multifamily property market, and estimating the size of the large multifamily property market. The overall size of the market could then be estimated in dollars. FHFA received four comments generally supporting the multifamily housing goal levels in the proposed rule. One policy advocacy group supported the goal levels, but cautioned that increasing the Enterprises' performance for very-low income families may be difficult without a significant increase in the availability of housing subsidies through which rents can be made affordable to such families.

Eight commenters opposed the proposed multifamily goal levels. Two not-for-profit organizations stated that rather than focus on multifamily goal targets, the Enterprises should address the unmet demand for affordable multifamily financing by focusing on the overall quality and effectiveness of project-specific efforts, prototypes and market-wide coverage. One trade association commented that the

[77] Multifamily Housing News: *Special Report: MBA Says Large Amounts of Multifamily Loans Will Mature in 2011 and After*, Feb. 11, 2009.

multifamily goals should continue to be measured as previously, stating that the proposed goals were too precise for these uncertain times. Two other trade associations commented that the proposed goal levels were too low, based on previous Enterprise performance. One trade association added that the Enterprises are now the principal source of financing for affordable rental housing, and FHFA should push them to remain as market leaders. Both Enterprises stated that the multifamily goal levels were too high, and that the demand for multifamily financing is too weak to support such levels.

The final rule lowers the multifamily goal levels by approximately 25 percent from those in the proposed rule. The lower goal levels reflect the uncertain state of the overall multifamily market, the anticipation that the Enterprises will play a less dominant role in that market through 2011 as competition for market share increases from such traditional players as life insurance companies and banks, the decrease in properties qualifying for Enterprise multifamily financing as a result of steep declines in multifamily property prices and declining fundamentals in the market (*e.g.* debt service ratios and LTV ratios, deteriorating property conditions), and the adverse impact on multifamily production as a result of decreased LIHTC investment.

As noted earlier, Freddie Mac's multifamily volume has not kept pace with Fannie Mae's multifamily volume since the beginning of the credit crisis in 2008, especially for very low-income units, due in part to Freddie Mac's reliance on CMBS and structured purchases from banks and thrifts. Structured purchases are not readily available and are likely to reappear in only limited volumes in the near term. Pursuant to this final rule, CMBS units will no longer count toward the housing goals.

Fannie Mae, on the other hand, is better positioned than Freddie Mac to finance affordable units through its flow business. For example, Fannie Mae has a division dedicated to purchasing mortgages on small multifamily properties (5 to 50 units). Smaller properties, in general, have higher percentages of affordable units than larger properties. Furthermore, Fannie Mae's DUS program allows it to share credit losses with lenders. Mortgages on small multifamily properties, however, are often more at risk of delinquency and default than other multifamily mortgage property types. Mortgages on small multifamily properties are usually more expensive to originate and underwrite than mortgages on large properties because the costs, mostly fixed, are spread over fewer units.[78] The DUS program helps Fannie Mae mitigate some of the credit risk of financing affordable multifamily units.

Since Fannie Mae will likely finance significantly more multifamily units in 2010 than Freddie Mac, consistent with the proposed rule, the final rule sets distinct goals for each of the Enterprises, as was done in previous years. FHFA anticipates that for low-income units and very low-income units, multifamily mortgages acquired by Freddie Mac will finance fewer units than multifamily mortgages acquired by Fannie Mae in 2010 and 2011. The disparity will be even greater for very low-income units. Freddie Mac will likely purchase multifamily loans that finance about half as many very low-income units as will be financed by multifamily loans acquired by Fannie Mae in 2010 and 2011.

Unlike with the dual approach for the single-family goals described above, FHFA has not defined the multifamily goals as prospective market-based targets, with a provision to be measured retrospectively against actual market data. The availability of the necessary market data to measure affordability of rents in the multifamily market, prospectively or retrospectively, is less certain. As a result, consistent with the proposed rule, the final rule sets the multifamily goals in the traditional prospective volume of business manner. However, these goals remain subject to the statutory provisions enabling them to be adjusted, or providing relief from enforcement, if multifamily market conditions so require.

FHFA considered previous multifamily performance and the current market in setting the multifamily goals in the final rule as well as revisions in the final rule which disallow counting CMBS toward multifamily goals in setting these revised goals.

*Multifamily low-income housing goal.* Under the final rule, the annual goal for Fannie Mae's purchases of mortgages on multifamily residential housing affordable to low-income families is at least 177,750 dwelling units for each of 2010 and 2011, a decrease from the 237,000 units set in the proposed rule. The annual goal for Freddie Mac's purchases of mortgages on multifamily residential housing affordable to low-income families is at least 161,250 such dwelling units for each of 2010 and 2011, a decrease from the 215,000 units set in the proposed rule.

*Multifamily very low-income housing subgoal.* Under the final rule, the annual subgoal for Fannie Mae's purchases of mortgages on multifamily residential housing affordable to very low-income families is at least 42,750 dwelling units for each of 2010 and 2011, a decrease from the 57,000 units set in the proposed rule. The annual subgoal for Freddie Mac's purchases of mortgages on multifamily residential housing affordable to very low-income families is at least 21,000 such dwelling units for each of 2010 and 2011, a decrease from the 28,000 units set in the proposed rule.

### *G. Small Multifamily Properties*

HERA requires the Enterprises to report on purchases of mortgages secured by small multifamily properties. In the proposed rule, FHFA invited comment on whether additional requirements for small multifamily properties should be considered.

Five commenters supported the establishment of small multifamily housing goals. They stated that this is an underserved market segment and should be a focus for the Enterprises. One policy advocacy group stated that a small multifamily housing goal would recognize the vast majority of renters who live in small multifamily properties. However, the commenter added that this still would not address the significant number of single-family rentals. A governmental entity stated that the goal should be expanded to include mixed-use residential properties that include one- to four-family buildings with ground floor commercial space.

Three commenters opposed establishing a small multifamily housing goal. One trade association supported reporting requirements for small multifamily properties rather than establishing a goal, and recommended that FHFA meet with industry and banking representatives to explore small multifamily options. Both Enterprises stated that small multifamily housing requirements were not necessary at this time, citing the current state of the multifamily market and the financial condition of the Enterprises.

FHFA has considered these comments and determined that the Enterprises should not be subject to small multifamily housing subgoals while in conservatorship. Such new subgoals could be viewed as encouraging substantial new activity in an area in which the Enterprises have limited operational capacity. Accordingly, the

[78] "Why do Small Multifamily Properties Bedevil Us?" Shekar Narasimhan, The Brookings Institution, Nov. 2001, *http://www.brookings.edu/articles/2001/11metropolitanpolicy_narasimhan.aspx.*

final rule does not establish such subgoals but, as provided by HERA, the Enterprises will be required to continue to report on their activity in this area.

*H. Discretionary Adjustment of Housing Goals—§ 1282.14*

Consistent with the requirements of section 1334 of the Safety and Soundness Act, as amended by HERA, and the proposed rule, § 1282.14 of the final rule provides for an Enterprise to petition the Director to reduce the level of any goal or subgoal,[79] and sets forth the standards and procedures for consideration by the Director in determining whether to reduce a goal or subgoal level.

One trade association supported the discretionary authority of the Director to adjust the housing goals upon petition by the Enterprises. However, this commenter requested that any such petitions and adjustments be made public to ensure transparent consideration of the full implications of any such request.

FHFA considered this comment and determined that the final rule should not make any changes to this section of the proposed rule, because it already provides for public comment on such adjustments, consistent with the process required under section 1334 of the Safety and Soundness Act, as amended by HERA.

*I. General Counting Requirements—§ 1282.15*

In the final rule, § 1282.15 sets forth general requirements for the counting of Enterprise mortgage purchases toward the achievement of the housing goals. Except as described below, these requirements are unchanged from the general requirements set forth in the proposed rule. Performance under the single-family housing goals will be evaluated based on the percentage of all single-family, owner-occupied mortgages purchased by an Enterprise that meet a particular goal. Performance under the multifamily housing goals will be evaluated based on the total number of units that meet a particular goal and are financed by mortgages purchased by an Enterprise.

The data estimation methodologies in this section have been revised to reflect changes in the housing goals for 2010 and 2011. The methodology for estimating affordability for single-family rental properties has been eliminated as unnecessary because the single-family housing goals are measured in terms of mortgages rather than units. The option to exclude single-family owner-occupied units with missing data up to one percent of the total number of single-family owner-occupied units backing mortgages purchased by an Enterprise has been removed because it is no longer in use by either Enterprise. The option to request approval of alternative methodologies has also been removed. In light of the shorter time period for which the housing goals are being established, it should not be necessary to make changes to the rules for missing data prior to FHFA's proposal of new housing goals for later years.

*Contract rent.* Under the proposed rule, the definition of "contract rent" would clarify that market rent would be used as the anticipated rent for unoccupied units.

Freddie Mac recommended that effective rent, not market rent, be used to determine affordability. Freddie Mac and other industry participants use effective rent, which averages nearly six percent below market rent, when underwriting multifamily loans and determining property value. The use of effective rent would align goals qualification rules with these market standards.

FHFA understands that it is industry practice when estimating cash flow for underwriting purposes to use rents net of rent concessions. FHFA also understands that when rent concessions are given, the tenants pay less than the contract rent for that given period of time. However, since FHFA does not have sufficient information to project when and where rent concessions will be available to tenants or prospective tenants, FHFA uses contract rents as the basis for establishing affordability and the multifamily housing goal and subgoal targets. Since the affordability of units in properties associated with the Enterprises' mortgage acquisitions will be scored against a housing goal based on contract rents, § 1282.15(d) of the final rule continues to require the Enterprises to use contract rents when calculating affordability.

*J. Special Counting Requirements—§ 1282.16*

Section 1282.16 of the final rule sets forth special counting requirements for the receipt of full, partial or no credit for a transaction toward achievement of the housing goals. A number of clarifying and conforming changes were proposed for this section to ensure consistent application of the counting rules among the Enterprises. The final rule adopts most of the changes from the proposed rule, except as described in more detail below.

As in the proposed rule, § 1282.16(b) of the final rule makes clear that where a mortgage falls within one of the categories excluded from consideration under the housing goals, the mortgage is excluded even if it otherwise falls within one of the special counting rules in § 1282.16(c). For example, a non-conventional mortgage that is excluded from consideration pursuant to § 1282.16(b)(3) could not be counted even if it otherwise would be counted as a seasoned mortgage under § 1282.16(c)(6). Section 1282.16(c) also makes clear that where a transaction falls under more than one of the special counting rules in § 1282.16(c), all of the applicable requirements must be satisfied in order for the loan to be counted for purposes of the housing goals.

Consistent with the proposed rule, § 1282.16(b) of the final rule does not include the provision that excluded jumbo conforming loans from consideration for purposes of the housing goals.[80] These loans had been excluded from consideration in the past because the goals had been established based on market estimates that preceded the increases in the conforming loan limits. Because the higher loan limits have been considered in the evaluation of the market for this final rule, it is no longer necessary to exclude such loans from consideration for purposes of the housing goals.

*Equity investments in low-income housing tax credits.* Consistent with the proposed rule, § 1282.16(b)(1) of the final rule clarifies the existing rule to refer more specifically to equity investments in LIHTCs as being excluded from counting toward the housing goals.

Four commenters supported the exclusion of Enterprise equity investments in LIHTCs from counting for purposes of the housing goals, and one commenter opposed such exclusion. One policy advocacy group commented that the lack of LIHTC investments is one reason for the short supply of affordable housing for very low-, low- and moderate-income families. Another policy advocacy group commented that the Enterprises should invest in LIHTCs but refrain from selling these investments in a manner that would destabilize the market. One trade association agreed that investments in LIHTCs should be a non-qualifying activity, but recommended that subordinate debt be allowed to fill the financing gap.

FHFA recognizes that LIHTCs are an important component of the affordable

[79] 12 U.S.C. 4564.

[80] *See* 12 CFR 1282.16(b)(10).

housing financing structure. However, investments in LIHTCs have never been counted for purposes of the housing goals, and the final rule does not make any changes to that policy.

*Home Equity Conversion Mortgages.* Consistent with the proposed rule, § 1282.16(b)(3) of the final rule excludes all purchases of non-conventional single-family mortgages, including mortgages insured under HUD's HECM insurance program, from counting for purposes of the housing goals. Certain non-conventional mortgages, including HECMs, have been counted for purposes of the goals in the past. HERA, however, amended section 1332(a) of the Safety and Soundness Act to restrict the single-family housing goals to include only conventional mortgages.[81] This restriction does not preclude the Enterprises' purchase of Charter-compliant non-conventional single-family mortgages, including HECMs, but such purchases will not count toward the housing goals—that is, such purchases are excluded from both the numerator and denominator in calculating goal performance. The final rule also clarifies that the existing exception that permitted certain non-conventional multifamily mortgages to count, continues to apply.

*Subordinate liens.* Proposed § 1282.16(b)(10) would have excluded purchases of subordinate lien mortgages (second mortgages) from counting for purposes of the housing goals, as does the final rule. This excludes "piggy-back" liens that may be acquired by an Enterprise along with the corresponding first lien mortgage and subordinate lien mortgages, such as home equity loans, acquired separately by an Enterprise where the Enterprise does not also acquire the corresponding first lien mortgage. The proceeds of a home equity loan are not used for the purchase price of a property, and the mortgage does not satisfy or replace an existing mortgage and so does not count toward the housing goals. FHFA excluded piggy-back loans from counting toward the housing goals because such loans are not easily distinguishable from home equity loans.

One trade association supported the general exclusion of subordinate or second lien mortgages, as well as first lien mortgages accompanied by simultaneous second lien mortgages, from counting for purposes of the housing goals. Four commenters supported providing housing goals credit for purchases of subordinate lien mortgages on multifamily properties. A trade association and a policy advocacy group stated that the Enterprises should be allowed to count subordinate liens on multifamily mortgages because it would help make low-cost capital available to support affordable lending. Fannie Mae commented that subordinate liens allow multifamily owners to tap additional equity for property rehabilitation without requiring refinancing or payment of a lockout waiver fee. Fannie Mae noted that subordinate liens could comprise five to ten percent of low- and very low-income multifamily units. Freddie Mac commented that subordinate financing is an efficient and standard industry practice that is beneficial to both owners and residents of multifamily rental housing. Freddie Mac stated that the exclusion of subordinate multifamily loans from housing goal-eligibility would reduce the availability of capital for multifamily properties, including for property repairs, improvements and upgrades.

Section 1282.16(b)(10) of the final rule excludes both single-family and multifamily subordinate liens from counting for purposes of the housing goals. This provision does not preclude the Enterprises' purchase of Charter-compliant subordinate lien mortgages, but as with HECMs, such purchases do not count for purposes of the housing goals. Although multifamily mortgages that finance dwelling units affordable to low-income families generally count toward the housing goals, it is not clear whether all subordinate lien multifamily mortgages are for the purpose of financing dwelling units affordable to low-income families. Accordingly, the final rule does not allow credit for subordinate lien multifamily mortgages. FHFA may solicit further public comment on whether such mortgages, entered into in a manner that is safe and sound, and which finance repairs, upgrades and rehabilitation that benefit low-income residents, should be counted for purposes of the housing goals.

*Mortgages previously counted.* Proposed § 1282.16(b)(11) would have made explicit the existing prohibition on counting mortgages for purposes of the housing goals if the mortgages had previously been counted for purposes of the performance of either Enterprise under the housing goals for a previous year. To limit excessively burdensome recordkeeping that could result, the proposed rule would have made clear that this limitation only extends back for five years.

The Enterprises opposed this provision, commenting that compliance would be burdensome and operationally challenging. They stated that only a small number of loans would be identified, but the cost of compliance would be very high and inter-Enterprise cooperation in data sharing could impact the competitive structure between the Enterprises.

In response to these comments and in view of the operational concerns expressed, the final rule retains the restriction on counting an Enterprise's own mortgages more than once, which shall only extend back for five years. The final rule does not extend this general restriction to mortgages the other Enterprise may have counted in a previous year.

*Certificate of occupancy.* Proposed § 1282.16(b)(12) would have excluded purchases of mortgages secured by properties that have not been certified as ready for occupancy from consideration for purposes of the housing goals.

Fannie Mae requested clarification on this counting issue for large multifamily properties that may be completed and certified for occupancy in stages. In particular, Fannie Mae stated that the rule should clarify whether the entire project is excluded if any part is not yet certified, or if the certified units may be counted. Fannie Mae also stated that the rule should clarify whether housing goals credit would be received in the year of certification or in the year of purchase.

In the final rule, to avoid splitting mortgage acquisitions across calendar reporting years, mortgages will be reported by an Enterprise, and receive housing goals credit where applicable, in the calendar year that all units are certified for occupancy. This may result in a delay in the reporting of a mortgage where not all units are certified for occupancy at the time of mortgage acquisition by the Enterprise. Mortgages with a reporting delay due to lack of full certification for occupancy will be excluded from both the numerator and denominator of the multifamily housing goals calculations for the year of acquisition.

*Private Label Securities.* As in the proposed rule, § 1282.16(b)(13) of the final rule excludes PLS from counting for purposes of the housing goals.

As discussed in the proposed rulemaking, historically, the Enterprises—particularly Freddie Mac—relied on PLS purchases to help them achieve certain affordable housing goals. Freddie Mac met the 2005 and 2006 affordable housing goals and subgoals in part through its purchases of AAA-rated tranches of PLS backed by subprime mortgages that were targeted to satisfy goals and subgoals. As house price appreciation and rising interest rates

[81] 12 U.S.C. 4562(a).

reduced housing affordability, PLS proliferated as the subprime share of the market grew to more than 20 percent. Fannie Mae and Freddie Mac began to follow suit in response to declining market share and in pursuit of higher profits. The Enterprises not only modified their own underwriting standards, but also bought hundreds of billions of dollars' worth of AAA-rated tranches of subprime and Alt-A PLS for the yield and, in certain instances, to satisfy specific housing goals and subgoals.

The results of providing large-scale funding for such loans were adverse for borrowers who entered into mortgages that did not sustain homeownership and for the Enterprises themselves. Although Fannie Mae and Freddie Mac have a combined 57 percent share of mortgages outstanding in their guaranteed portfolio, the mortgages in that portfolio account for only 25 percent of serious delinquencies. However, while PLS account for 12 percent of all mortgages outstanding, PLS account for 34 percent of serious delinquencies. As delinquencies in PLS portfolios triggered downgrades, 90 percent of the PLS holdings of the Enterprises experienced a downgrade. In light of that record, the final rule, like the proposed rule, excludes PLS from consideration under the housing goals.

In addition to the recent dismal performance of PLS, it is reasonable to separate any future growth of the PLS market from the Enterprises' housing goals. The housing goals reflect Congress' concern that the Enterprises' charter mission to support the stability, liquidity and affordability of the secondary market not be managed to the detriment or neglect of goal-eligible mortgages. In this way the goals may be seen as a mechanism to ensure that each Enterprise serves all segments of the mortgage market available to it. Accordingly, even to the extent that a non-GSE secondary mortgage market returns, loans backing new or seasoned PLS will not count in either the numerator or the denominator for purposes of the housing goals.

As in the proposed rule, the final rule also excludes CMBS from counting towards the housing goals.

FHFA invited comments in the proposed rulemaking on the proposed exclusion of PLS, and on alternatives to not counting PLS mortgages for purposes of the housing goals. One alternative discussed was to allow PLS mortgages to be counted if an appropriate senior Enterprise official certified that the mortgages are compliant with all existing regulations regarding good mortgage practices, and with the interagency guidance on subprime lending and non-traditional loans. FHFA also requested comments on whether CMBS should be treated differently from other PLS for purposes of the housing goals.

Five commenters supported excluding PLS, while Freddie Mac favored inclusion of PLS in the housing goals if due diligence on the characteristics of the loans backing the securities is conducted. The MBA supported excluding CMBS for goals credit, while three other commenters favored including CMBS. One trade association commented that Enterprise participation in the market has expanded liquidity to the apartment sector, and supported housing goals credit for the purchase of CMBS for multifamily properties. The commenter recommended that a reduced percentage of units be allocated to CMBS. Both Enterprises opposed the exclusion of purchases of CMBS for housing goals purposes. Fannie Mae stated that maturing loans in CMBS securities are being extended by special servicers, reducing the number of loans available for refinancing or for sale. Freddie Mac commented that it has accomplished small multifamily financing through structured pool deals and CMBS purchases to mitigate the higher risk of small multifamily finance. Freddie Mac also commented that these avenues of finance are not available in the current market, but they bring liquidity to the CMBS market and should receive goals credit.

Consistent with the exclusion of single-family PLS from the housing goals, the final rule does not count CMBS for purposes of the housing goals. While CMBS historically have helped the Enterprises to meet multifamily housing goals, purchases of CMBS do not add liquidity to the multifamily market in the same way as the direct purchase and securitization of multifamily mortgages by the Enterprises.

*Housing Trust Fund and Capital Magnet Fund.* As in the proposed rule, and pursuant to HERA, § 1282.16(b)(14) of the final rule provides that Enterprise contributions to the Housing Trust Fund and the Capital Magnet Fund and mortgage purchases funded with such grant amounts shall not be counted for purposes of the housing goals.[82]

*REMICs.* Consistent with the proposed rule, § 1282.16(c) of the final rule no longer includes real estate mortgage investment conduits (REMICs) as mortgage purchases for purposes of the housing goals, consistent with the general exclusion of PLS under § 1282.16(b)(13). In addition, § 1282.16(c) eliminates consideration of expiring assistance contracts, reflecting the changes under HERA to the former special affordable housing goal.

*Risk-sharing.* The proposed rule would not have changed existing § 1282.16(c)(3), which provides that a mortgage purchase under a risk-sharing arrangement between an Enterprise and a Federal agency counts for purposes of the housing goals if the Enterprise was responsible for a substantial amount of the risk, specified as at least 50 percent of the risk. Section 1282.16(c)(3) of the final rule does not include a specific percent that would constitute a "substantial amount." The change is not intended to affect the substantive requirement that an Enterprise hold a substantial portion of the risk in order for units to be counted for purposes of the housing goals, but is intended to provide more flexibility in determining on a case-by-case basis whether a particular risk-sharing program meets that requirement.

*Cooperative housing and condominiums.* Section 1282.16(c)(5) is unchanged from the proposed rule and amends the existing provisions regarding cooperative housing and condominiums to reflect HERA's treatment of single-family housing and multifamily housing under separate goals.

*Mortgage revenue bonds.* As in the proposed rule, § 1282.16(c)(8) of the final rule removes current limitations on counting mortgage revenue bonds related to the source of funds for repayment and the presence of additional credit enhancements. An Enterprise is required to have sufficient information available to determine the eligibility of any underlying mortgages before counting such mortgages or units for purposes of the housing goals.

Two policy advocacy groups and the Enterprises supported these proposed changes to the counting rules. One policy advocacy group supported Enterprise investment in housing bonds as a means to stabilize and improve pricing in the market. The other policy advocacy group commented that the inclusion of eligible mortgage revenue bonds is important and helpful, because these bonds are often a major source of lower-cost capital for the preservation and construction of affordable rental housing units. Fannie Mae supported the inclusion of mortgage revenue bonds, and recommended that the rule be modified to provide full credit for dwellings financed by tax exempt or taxable bonds issued by state and local HFAs. Freddie Mac commented that the proposed provision will encourage the

[82] *See* 12 U.S.C. 4568, 4569.

Enterprises to continue to support state and local HFAs through the purchase of single-family and multifamily mortgage revenue bonds.

FHFA does not believe that a further broadening of the mortgage revenue bond counting rules is appropriate while the Enterprises are in conservatorship.

*Loan modifications.* Proposed § 1282.16(c)(10) would have treated certain modifications of single-family loans held in an Enterprise's portfolio or in a pool backing a security guaranteed by an Enterprise as mortgage purchases for purposes of the housing goals. Only modifications undertaken under the Making Home Affordable (MHA) program would have been eligible for inclusion.

Two commenters recommended that this counting treatment be expanded to include non-MHA single-family loan modifications and multifamily loan modifications. One trade association recommended the inclusion of multifamily loan modifications, and stated that as a result of falling property values and stress on rental income due to the extreme economic and employment issues faced by multifamily property owners, many owners will not be able to refinance their loans. Freddie Mac recommended that multifamily loan modifications, as well as single-family loan modifications outside of MHA, be eligible to count toward the housing goals.

The final rule adjusting the levels of the housing goals for 2009, which generally lowered the housing goal levels, allowed credit for MHA modifications. *See* 74 FR 39873, 39898 (Aug. 10, 2009). Proposed § 1282.16(c)(10) would have retained this provision. Loan modifications, however, are not readily incorporated into market estimates, which makes it difficult to set housing goals that reflect the actual market. Accordingly, the final rule provides that only permanent MHA loan modifications will be counted as mortgage purchases for purposes of the housing goals. For 2010, only modifications that were both initiated and made permanent in 2010 will be counted for purposes of the housing goals. For 2011, only modifications that were initiated in 2010 or 2011 and made permanent in 2011 will be counted for purposes of the housing goals. Modifications that were opened on a trial basis but not made permanent in 2010 or 2011 will not be given credit toward the goals.

In addition, all such permanent MHA loan modifications will be treated as refinance mortgages in 2010 and 2011, rather than being treated in accordance with the original purpose of the loan. Loan modifications are more similar to refinancing mortgages than to purchase money mortgages. A loan modification changes the terms of the loan but involves the same property and the same borrower. A loan modification does not involve a new home purchase. Thus, it is more appropriate to treat loan modifications as refinancing mortgages than as home purchase mortgages. Accordingly, a modification of a low-income home purchase mortgage will not be counted toward the low-income home purchase goal, as it was in 2009. Rather, it will be counted in calculating performance on the low-income refinance goal. As a result, performance on the three home purchase goals for 2010–11 will not be affected by loan modifications, but performance on the low-income refinance goal will be affected. That is, all permanent MHA loan modifications will be included in the denominator, and all permanent MHA loan modifications for low-income families will be included in the numerator in calculating performance on the low-income refinance goal in 2010 and 2011.

FHFA will consider providing credit for MHA loan modifications in the final rulemaking on the Duty to Serve requirements of HERA.

*HOEPA mortgages and mortgages with unacceptable terms or conditions.* Consistent with the proposed rule, § 1282.16(d) of the final rule relocates existing provisions regarding HOEPA mortgages and mortgages with unacceptable terms or conditions from current § 1282.16(c). Placing these provisions in a separate paragraph reflects the fact that unlike other types of mortgage purchases, HOEPA mortgages and mortgages with unacceptable terms and conditions must be counted in the denominator as mortgage purchases but can never be counted in the numerator, regardless of whether the mortgages would otherwise qualify based on the affordability and other counting criteria.

*Multifamily property conversion.* Some commenters suggested that FHFA revise the counting rules to deny housing goal credit for multifamily loans that aid the conversion of properties from being affordable to market rate properties, at which point the units, although initially scored as affordable, would no longer be affordable. FHFA expects to address this issue in a separate rulemaking following the implementation of this final rule.

*K. Affordability Definitions—§§ 1282.17 Through 1282.19*

Consistent with the proposed rule, § 1282.17 of the final rule sets forth definitions and establishes cutoff points or boundaries for the statutory and traditionally defined levels of affordability based on AMI for owners and tenants of rental units where the family size and income are known to the Enterprise. In addition to the levels of affordability that currently appear at § 1282.17, this section includes an additional paragraph (e) for extremely low-income borrowers and tenants with income at or below 30 percent of AMI with adjustments for family size. Although the Enterprise housing goals do not specifically target extremely low-income borrowers or tenants, the final rule establishes cutoffs for determining such affordability to facilitate any reporting or analysis of such data that is required.

As in the proposed rule, § 1282.18 of the final rule sets forth definitions and establishes cutoff points or boundaries for the statutory and traditionally defined levels of affordability based on AMI for tenants of rental units where the family size is not known to the Enterprise. In addition to the levels of affordability that currently appear at § 1282.18, this section includes an additional paragraph (e) for extremely low-income tenants with income at or below 30 percent of AMI with adjustments for unit size.

As in the proposed rule, § 1282.19 of the final rule sets forth definitions and establishes cutoff points or boundaries for the statutory and traditionally defined levels of affordability based on AMI for tenants of rental units where tenant income is not known to the Enterprise. In addition to the levels of affordability that currently appear at § 1282.19, this section includes an additional paragraph (e) for extremely low-income tenants with income at or below 30 percent of AMI with adjustments for unit size.

*L. Housing Goals Enforcement—§§ 1282.20 and 1282.21*

Consistent with the proposed rule, § 1282.20 of the final rule provides that the Director shall determine whether an Enterprise has met the housing goals, in accordance with the standards established under the Safety and Soundness Act, as amended by HERA and this final rule. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet any housing goal, the Director shall provide notice, in writing, to the Enterprise of

such preliminary determination in accordance with 12 U.S.C. 4566(b).

As in the proposed rule, § 1282.21 of the final rule includes requirements for submission of a housing plan by an Enterprise for failure or substantial probability of failure to meet any housing goal that was or is feasible. The requirement to submit a housing plan is at the discretion of the Director.

*M. Reporting Requirements—Subpart D*

As in the proposed rule, subpart D of the final rule relocates existing Enterprise reporting requirements from part 81, subpart E of title 24 of the Code of Federal Regulations. Section 1282.65 relocates an existing regulatory provision on data certification from 24 CFR 81.102. These provisions have continued in effect pursuant to section 1302 of HERA. Upon the effective date of the final housing goals rule, the reporting requirement and Enterprise data integrity provisions in 24 CFR part 81 will no longer be in effect.

The proposed rule included various conforming changes throughout subpart D. Proposed § 1282.62(b) would have included a requirement for the Enterprises to submit loan-level mortgage data on a quarterly basis. Previously, such submissions were required only semi-annually. Proposed § 1282.62(c) would have revised the due date for submission to FHFA of the required quarterly Mortgage Reports from 60 days after the end of the quarter to 45 days. Proposed § 1282.63 would have revised the due date for fourth quarter Annual Mortgage Report and the Annual Housing Activities Reports (AHARs) from 75 days after the end of the calendar year to 60 days.

In its comment letter, Fannie Mae requested that the due dates for the quarterly and Annual Mortgage Reports and loan-level data submissions remain unchanged. Fannie Mae stated that shortening the time period would adversely impact its quarterly data quality reviews and prevent reconciliation with its annual Form 10–K, which is due within 60 days of the end of the calendar year.

FHFA acknowledges Fannie Mae's concerns and, accordingly, the final rule retains the current due dates for the quarterly and Annual Mortgage Reports and AHARs. Consistent with the proposed rule, the final rule requires that the loan-level data be submitted on a quarterly basis.

As in the proposed rule, § 1282.63 of the final rule requires that the Enterprises make their AHARs available to the public online. FHFA does not expect that the requirement to make available online information that is already publicly available will be burdensome to the Enterprises. As in the proposed rule, § 1282.64 of the final rule eliminates the requirement for the Enterprises to submit information that is typically made available to the public by each Enterprise. The Director may continue to request such reports, information and data as the Director deems necessary. Consistent with the proposed rule, subpart D of the final rule does not include the provisions regarding submission of additional data or reports and the addresses for submission of information that were formerly found at 24 CFR 81.65 and 81.66. Section 1282.64 is sufficiently broad to encompass any requests for additional data or reports that the Director deems necessary.

Consistent with the proposed rule, § 1282.65 of the final rule simplifies the detailed procedures laid out in the previous data integrity provision found at 24 CFR 81.102. FHFA will implement the data integrity process pursuant to its general regulatory authority over the Enterprises. FHFA expects that the Enterprises will continue to work cooperatively with FHFA to identify and resolve any discrepancies or errors in the housing goals data reported to FHFA. Section 1282.65 maintains the most important aspects of the data integrity process in the regulation, including the requirement that the Enterprises certify the accuracy of their submissions.

One trade association requested that FHFA consider clarifying the procedures for certification of submissions, and recommended that measures should be established to ensure the Enterprises submit accurate, truthful and complete information. FHFA currently requires data submitted for the calendar year housing goals to be certified as true, correct and complete by a corporate officer with the authority to sign for the Enterprise. This certification was required beginning with the submission of 2005 mortgage data to align with the customary practice of regulators of financial institutions, which require certification as a means of ensuring corporate accuracy in, and accountability for, the financial information provided by a corporation to its regulators.

*N. Book-Entry Procedures—Part 1249*

As in the proposed rule, part 1249 of the final rule relocates existing regulatory provisions on book-entry procedures from part 81, subpart H of title 24 of the Code of Federal Regulations. These provisions have continued in effect pursuant to section 1302 of HERA. Upon the effective date of the final housing goals rule, the book-entry procedures in 24 CFR part 81 will no longer be in effect.

As in the proposed rule, the final rule also relocates definitions that are currently found in § 1282.2 and that are applicable only to the book-entry procedures in part 1249 to a new section 1249.10 in that part. The final rule makes conforming changes throughout the part, including a clarification that the waiver provision in § 1249.17 applies only to the book-entry provisions in part 1249. Section 1249.15 has been amended to reflect the transfer of authority from the Secretary of HUD to the Director. The final rule also corrects several typographical errors that were present in the proposed rule. The final rule does not make any changes to the substance of the book-entry provisions.

**V. Paperwork Reduction Act**

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**VI. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

**List of Subjects**

*12 CFR Part 1249*

Federal Reserve System, Securities.

*12 CFR Part 1282*

Mortgages, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, 4526, FHFA amends chapter XII of title 12 of the Code of Federal Regulations as follows:

■ 1. Part 1249 is added to subchapter C to read as follows:

**CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**

**SUBCHAPTER C—ENTERPRISES**

## PART 1249—BOOK–ENTRY PROCEDURES

Sec.



**Authority:** 12 U.S.C. 4501, 4502, 4511, 4513, 4526.

### § 1249.10 Definitions.

(a) *General.* Unless the context requires otherwise, terms used in this part that are not defined in this part, have the meanings as set forth in 31 CFR 357.2 and in 12 CFR 1282.1. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the Enterprises.

(b) *Other terms.* As used in this part, the term:

*Book-entry Enterprise Security* means an Enterprise Security issued or maintained in the Book-entry System. Book-entry Enterprise Security also means the separate interest and principal components of a Book-entry Enterprise Security if such security has been designated by the Enterprise as eligible for division into such components and the components are maintained separately on the books of one or more Federal Reserve Banks.

*Book-entry System* means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the Enterprises, on which Book-entry Enterprise Securities are issued, recorded, transferred and maintained in book-entry form.

*Definitive Enterprise Security* means an Enterprise Security in engraved or printed form, or that is otherwise represented by a certificate.

*Eligible Book-entry Enterprise Security* means a Book-entry Enterprise Security issued or maintained in the Book-entry System which by the terms of its Securities Documentation is eligible to be converted from book-entry form into definitive form.

*Enterprise Security* means any security or obligation of Fannie Mae or Freddie Mac issued under its respective Charter Act in the form of a Definitive Enterprise Security or a Book-entry Enterprise Security.

*Entitlement Holder* means a Person or an Enterprise to whose account an interest in a Book-entry Enterprise Security is credited on the records of a Securities Intermediary.

*Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains Book-entry Securities accounts (including Book-entry Enterprise Securities) and transfers Book-entry Securities (including Book-entry Enterprise Securities).

*Participant* means a Person or Enterprise that maintains a Participant's Securities Account with a Federal Reserve Bank.

*Person,* as used in this part, means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, an Enterprise, or a Federal Reserve Bank.

*Revised Article 8* has the same meaning as in 31 CFR 357.2.

*Securities Documentation* means the applicable statement of terms, trust indenture, securities agreement or other documents establishing the terms of a Book-entry Enterprise Security.

*Security* means any mortgage participation certificate, note, bond, debenture, evidence of indebtedness, collateral-trust certificate, transferable share, certificate of deposit for a security, or, in general, any interest or instrument commonly known as a "security".

*Transfer message* means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry Enterprise Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

### § 1249.11 Maintenance of Enterprise Securities.

An Enterprise Security may be maintained in the form of a Definitive Enterprise Security or a Book-entry Enterprise Security. A Book-entry Enterprise Security shall be maintained in the Book-entry System.

### § 1249.12 Law governing rights and obligations of United States, Federal Reserve Banks, and Enterprises; rights of any person against United States, Federal Reserve Banks, and Enterprises; law governing other interests.

(a) Except as provided in paragraph (b) of this section, the following rights and obligations are governed solely by the book-entry regulations contained in this part, the Securities Documentation, and Federal Reserve Bank Operating Circulars (but not including any choice of law provisions in the Securities Documentation to the extent such provisions conflict with the Book-entry regulations contained in this part):

(1) The rights and obligations of an Enterprise and the Federal Reserve Banks with respect to:

(i) A Book-entry Enterprise Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Enterprise Securities; and

(2) The rights of any Person, including a Participant, against an Enterprise and the Federal Reserve Banks with respect to:

(i) A Book-entry Enterprise Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Enterprise Securities;

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1249.13(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1249.13(c)(1), is governed by the law determined in the manner specified in paragraph (d) of this section.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

(d) To the extent not otherwise inconsistent with this part, and notwithstanding any provision in the Securities Documentation setting forth a

choice of law, the provisions set forth in 31 CFR 357.11 regarding law governing other interests apply and shall be read as though modified to effectuate the application of 31 CFR 357.11 to the Enterprises.

**§ 1249.13 Creation of Participant's Security Entitlement; security interests.**

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Enterprise Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) An Enterprise and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, an Enterprise, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 1249.12(b) or (d). The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

**§ 1249.14 Obligations of Enterprises; no adverse claims.**

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 1249.13(c)(1), for the purposes of this part, each Enterprise and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Enterprise Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor an Enterprise shall be liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry Enterprise Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Enterprise Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Enterprise to make payments (including payments of interest and principal) with respect to Book-entry Enterprise Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on Book-entry Enterprise Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry Enterprise Securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the redemption proceeds, including both redemption proceeds, where applicable, to a Funds Account at such Federal Reserve Bank or otherwise paying such redemption proceeds as directed by the Participant. No action by the Participant ordinarily is required in connection with the redemption of a Book-entry Enterprise Security.

**§ 1249.15 Authority of Federal Reserve Banks.**

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Enterprises to perform the following functions with respect to the issuance of Book-entry Enterprise Securities offered and sold by an Enterprise to which this part applies, in accordance with the Securities Documentation, Federal Reserve Bank Operating Circulars, this part, and any procedures established by the Director consistent with these authorities:

(1) To service and maintain Book-entry Enterprise Securities in accounts established for such purposes;

(2) To make payments with respect to such securities, as directed by the Enterprise;

(3) To effect transfer of Book-entry Enterprise Securities between Participants' Securities Accounts as directed by the Participants;

(4) To effect conversions between Book-entry Enterprise Securities and Definitive Enterprise Securities with respect to those securities as to which conversion rights are available pursuant to the applicable Securities Documentation; and

(5) To perform such other duties as fiscal agent as may be requested by the Enterprise.

(b) Each Federal Reserve Bank may issue Federal Reserve Bank Operating Circulars not inconsistent with this part, governing the details of its handling of Book-entry Enterprise Securities, Security Entitlements, and the operation of the Book-entry System under this part.

**§ 1249.16 Withdrawal of Eligible Book-entry Enterprise Securities for conversion to definitive form.**

(a) Eligible Book-entry Enterprise Securities may be withdrawn from the Book-entry System by requesting delivery of like Definitive Enterprise Securities.

(b) A Federal Reserve Bank shall, upon receipt of appropriate instructions to withdraw Eligible Book-entry

Enterprise Securities from book-entry in the Book-entry System, convert such securities into Definitive Enterprise Securities and deliver them in accordance with such instructions. No such conversion shall affect existing interests in such Enterprise Securities.

(c) All requests for withdrawal of Eligible Book-entry Enterprise Securities must be made prior to the maturity or date of call of the securities.

(d) Enterprise Securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable Securities Documentation.

**§ 1249.17 Waiver of regulations.**

The Director reserves the right, in the Director's discretion, to waive any provision(s) of this part in any case or class of cases for the convenience of an Enterprise, the United States, or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Director is satisfied that such action will not subject an Enterprise or the United States to any substantial expense or liability.

**§ 1249.18 Liability of Enterprises and Federal Reserve Banks.**

An Enterprise and the Federal Reserve Banks may rely on the information provided in a Transfer Message, and are not required to verify the information. An Enterprise and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message, or evidence submitted in support thereof.

**§ 1249.19 Additional provisions.**

(a) *Additional requirements.* In any case or any class of cases arising under this part, an Enterprise may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Enterprise be necessary for the protection of the interests of the Enterprise.

(b) *Notice of attachment for Enterprise Securities in Book-entry System.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

■ 2. Part 1282 is revised to read as follows:

**SUBCHAPTER E—HOUSING GOALS AND MISSION**

## PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

Sec.



**Authority:** 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566, 4603.

### Subpart A—General

**§ 1282.1 Definitions.**

(a) *Statutory terms.* All terms defined in the Safety and Soundness Act are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section.

(b) *Other terms.* As used in this part, the term:

*AHAR* means the Annual Housing Activities Report that an Enterprise submits to the Director under section 309(n) of the Fannie Mae Charter Act or section 307(f) of the Freddie Mac Act.

*AHAR information* means data or information contained in the AHAR.

*AHS* means the American Housing Survey published by HUD and the Department of Commerce.

*Balloon mortgage* means a mortgage providing for payments at regular intervals, with a final payment ("balloon payment") that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specified period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

*Borrower income* means the total gross income relied on in making the credit decision.

*Charter Act* means the Fannie Mae Charter Act, as amended, or the Freddie Mac Act, as amended.

*Contract rent* means the total rent that is, or is anticipated to be, specified in the rental contract as payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges that are included in the rental contract. In determining contract rent, rent concessions shall not be considered, *i.e.,* contract rent is not decreased by any rent concessions. Contract rent is rent net of rental subsidies. Anticipated rent for unoccupied units may be the market rent for similar units in the neighborhood as determined by the lender or appraiser for underwriting purposes.

*Conventional mortgage* means a mortgage other than a mortgage as to which an Enterprise has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

*Day* means a calendar day.

*Designated disaster area* means any census tract that is located in a county designated by the federal government as adversely affected by a declared major disaster administered by FEMA, where individual assistance payments were authorized by FEMA. A census tract shall be treated as a "designated disaster area" for purposes of this part beginning on the January 1 after the FEMA designation of the county, or such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the FEMA designation. This time period may be adjusted for a particular disaster area by notice from FHFA to the Enterprises.

*Director* means the Director of FHFA or his or her designee.

*Dwelling unit* means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

*Enterprise* means Fannie Mae or Freddie Mac (*Enterprises* means, collectively, Fannie Mae and Freddie Mac).

*Extremely low-income* means:

(i) In the case of owner-occupied units, income not in excess of 30 percent of area median income; and

(ii) In the case of rental units, income not in excess of 30 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

*Families in low-income areas* means:

(i) Any family that resides in a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income;

(ii) Any family with an income that does not exceed area median income that resides in a minority census tract; and

(iii) Any family with an income that does not exceed area median income that resides in a designated disaster area.

*Family* means one or more individuals who occupy the same dwelling unit.

*Fannie Mae* means the Federal National Mortgage Association and any affiliate thereof.

*Fannie Mae Charter Act* means the Federal National Mortgage Association Charter Act, as amended (12 U.S.C. 1715 *et seq.*).

*FEMA* means the Federal Emergency Management Agency.

*FHFA* means the Federal Housing Finance Agency.

*FOIA* means the Freedom of Information Act, as amended (5 U.S.C. 552).

*Freddie Mac* means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

*Freddie Mac Act* means the Federal Home Loan Mortgage Corporation Act, as amended (12 U.S.C. 1451 *et seq.*).

*Ginnie Mae* means the Government National Mortgage Association.

*HMDA* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

*HOEPA mortgage* means a mortgage covered by section 103(aa) of the Home Ownership and Equity Protection Act (HOEPA) (15 U.S.C. 1602(aa)), as implemented by the Board of Governors of the Federal Reserve System.

*HUD* means the United States Department of Housing and Urban Development.

*Lender* means any entity that makes, originates, sells, or services mortgages, and includes the secured creditors named in the debt obligation and document creating the mortgage.

*Low-income* means:

(i) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(ii) In the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

*Median income* means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

*Metropolitan area* means a metropolitan statistical area (MSA), or a portion of such an area, including Metropolitan Divisions, for which median family income estimates are determined by HUD.

*Minority* means any individual who is included within any one or more of the following racial and ethnic categories:

(i) American Indian or Alaskan Native—a person having origins in any of the original peoples of North and South America (including Central America), and who maintains Tribal affiliation or community attachment;

(ii) Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(iii) Black or African American—a person having origins in any of the black racial groups of Africa;

(iv) Hispanic or Latino—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and

(v) Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

*Minority census tract* means a census tract that has a minority population of at least 30 percent and a median income of less than 100 percent of the area median income.

*Moderate-income* means:

(i) In the case of owner-occupied units, income not in excess of area median income; and

(ii) In the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families in accordance with this part.

*Mortgage* means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. "Mortgage" includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

*Mortgage data* means data obtained by the Director from the Enterprises under section 309(m) of the Fannie Mae Charter Act and section 307(e) of the Freddie Mac Act.

*Mortgage purchase* means a transaction in which an Enterprise bought or otherwise acquired a mortgage or an interest in a mortgage for portfolio, resale, or securitization.

*Mortgage revenue bond* means a tax-exempt bond or taxable bond issued by a State or local government or agency where the proceeds from the bond issue are used to finance residential housing.

*Mortgage with unacceptable terms or conditions* means a single-family mortgage, including a reverse mortgage, or a group or category of such mortgages, with one or more of the following terms or conditions:

(i) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of $1000, or an alternative amount requested by an Enterprise and determined by the Director as appropriate for small mortgages.

(A) For purposes of this definition, points and fees include:

(*1*) Origination fees;

(*2*) Underwriting fees;

(*3*) Broker fees;

(*4*) Finder's fees; and

(*5*) Charges that the lender imposes as a condition of making the loan, whether they are paid to the lender or a third party;

(B) For purposes of this definition, points and fees do not include:

(*1*) Bona fide discount points;

(*2*) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;

(*3*) The cost of mortgage insurance or credit-risk price adjustments;

(*4*) The costs of title, hazard, and flood insurance policies;

(*5*) State and local transfer taxes or fees;

(*6*) Escrow deposits for the future payment of taxes and insurance premiums; and

(*7*) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount;

(ii) An annual percentage rate that exceeds by more than 8 percentage points the yield on Treasury securities with comparable maturities as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit was received;

(iii) Prepayment penalties, except where:

(A) The mortgage provides some benefit to the borrower (*e.g.,* a rate or fee reduction for accepting the prepayment premium);

(B) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;

(C) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and

(D) The prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments;

(iv) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage;

(v) Underwriting practices contrary to the Interagency Guidance on Nontraditional Mortgage Product Risks (71 FR 58609) (Oct. 4, 2006), the Interagency Statement on Subprime Mortgage Lending (72 FR 37569) (July 10, 2007), or similar guidance subsequently issued by Federal banking agencies;

(vi) Failure to comply with fair lending requirements; or

(vii) Other terms or conditions that are determined by the Director to be an unacceptable term or condition of a mortgage.

*Multifamily housing* means a residence consisting of more than four dwelling units. The term includes cooperative buildings and condominium projects.

*Non-metropolitan area* means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area for which median family income estimates are published annually by HUD.

*Owner-occupied housing* means single-family housing in which a mortgagor resides, including two- to four-unit owner-occupied properties where one or more units are used for rental purposes.

*Participation* means a fractional interest in the principal amount of a mortgage.

*Private label security* means any mortgage-backed security that is neither issued nor guaranteed by Fannie Mae, Freddie Mac, Ginnie Mae, or any other government agency.

*Proprietary information* means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that contain trade secrets or privileged or confidential, commercial, or financial information that, if released, would be likely to cause substantial competitive harm.

*Public data* means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that the Director determines are not proprietary and may appropriately be disclosed consistent with other applicable laws and regulations.

*Purchase money mortgage* means a mortgage given to secure a loan used for the purchase of a single-family residential property.

*Refinancing mortgage* means a mortgage undertaken by a borrower that satisfies or replaces an existing mortgage of such borrower. The term does not include:

(i) A renewal of a single payment obligation with no change in the original terms;

(ii) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), with a corresponding change in the payment schedule;

(iii) An agreement involving a court proceeding;

(iv) A workout agreement, in which a change in the payment schedule or collateral requirements is agreed to as a result of the mortgagor's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;

(v) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage;

(vi) A renegotiated balloon mortgage on a multifamily property where the balloon payment was due within 1 year after the date of the closing of the renegotiated mortgage; and

(vii) A conversion of a balloon mortgage note on a single-family property to a fully amortizing mortgage note where the Enterprise already owns or has an interest in the balloon note at the time of the conversion.

*Rent* means, for a dwelling unit:

(i) When the contract rent includes all utilities, the contract rent; or

(ii) When the contract rent does not include all utilities, the contract rent plus:

(A) The actual cost of utilities not included in the contract rent; or

(B) A utility allowance.

*Rental housing* means dwelling units in multifamily housing and dwelling units that are not owner-occupied in single-family housing.

*Rental unit* means a dwelling unit that is not owner-occupied and is rented or available to rent.

*Residence* means a property where one or more families reside.

*Residential mortgage* means a mortgage on single-family or multifamily housing.

*Safety and Soundness Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*).

*Seasoned mortgage* means a mortgage on which the date of the mortgage note is more than 1 year before the Enterprise purchased the mortgage.

*Second mortgage* means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

*Secondary residence* means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

*Single-family housing* means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

*Utilities* means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for cable or telephone service.

*Utility allowance* means either:

(i) The amount to be added to contract rent when utilities are not included in contract rent (also referred to as the "AHS-derived utility allowance"), as issued periodically by FHFA; or

(ii) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located.

*Very low-income* means:

(i) In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

(ii) In the case of rental units, income not in excess of 50 percent of area

median income, with adjustments for smaller and larger families in accordance with this part.

*Working day* means a day when FHFA is officially open for business.

## Subpart B—Housing Goals

### § 1282.11 General.

(a) *General.* Pursuant to the requirements of the Safety and Soundness Act (12 U.S.C. 4561–4564, 4566), this subpart establishes:

(1) Three single-family owner-occupied purchase money mortgage housing goals, a single-family owner-occupied purchase money mortgage housing subgoal, a single-family refinancing mortgage housing goal, a multifamily special affordable housing goal and a multifamily special affordable housing subgoal;

(2) Requirements for measuring performance under the goals; and

(3) Procedures for monitoring and enforcing the goals.

(b) *Annual goals.* Each housing goal shall be established by regulation no later than December 1 of the preceding year, except that any housing goal may be adjusted by regulation to reflect subsequent available data and market developments.

### § 1282.12 Single-family housing goals.

(a) *Single-family housing goals.* An Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds either:

(1) The share of the market that qualifies for the goal; or

(2) The benchmark level for the goal.

(b) *Size of market.* The size of the market for each goal shall be established annually by FHFA based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall only be counted for the applicable goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest $1,000) shall be excluded;

(5) All mortgages with rate spreads of 150 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) *Low-income families housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 27 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) *Very low-income families housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for very low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 8 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(e) *Low-income areas housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income areas shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) A benchmark level which shall be set annually by FHFA notice based on the benchmark level for the low-income areas housing subgoal, plus an adjustment factor reflecting the additional incremental share of mortgages for moderate-income families in designated disaster areas in the most recent year for which such data is available.

(f) *Low-income areas housing subgoal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income census tracts or for moderate-income families in minority census tracts shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 13 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(g) *Refinancing housing goal.* The percentage share of each Enterprise's total purchases of refinancing mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 21 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

### § 1282.13 Multifamily special affordable housing goal and subgoal.

(a) *Multifamily housing goal and subgoal.* An Enterprise shall be in compliance with a multifamily housing goal or subgoal if its performance under the housing goal or subgoal meets or exceeds the benchmark level for the goal.

(b) *Multifamily low-income housing goal.* For the years 2010 and 2011, the goal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 177,750 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise in each year, and for Freddie Mac, at least 161,250 such dwelling units in each year.

(c) *Multifamily very low-income housing subgoal.* For the years 2010 and 2011, the subgoal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 42,750 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise in each year, and for Freddie Mac, at least 21,000 such dwelling units in each year.

### § 1282.14 Discretionary adjustment of housing goals.

(a) An Enterprise may petition the Director in writing during any year to reduce any goal or subgoal for that year.

(b) The Director shall seek public comment on any such petition for a period of 30 days.

(c) The Director shall make a determination regarding the petition

within 30 days after the end of the public comment period. If the Director requests additional information from the Enterprise after the end of the public comment period, the Director may extend the period for a final determination for a single additional 15-day period.

(d) The Director may reduce a goal or subgoal pursuant to a petition for reduction only if:

(1) Market and economic conditions or the financial condition of the Enterprise require such a reduction; or

(2) Efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Charter Acts (12 U.S.C. 1716; 12 U.S.C. 1451 note).

**§ 1282.15 General counting requirements.**

(a) *Calculating the numerator and denominator for single-family housing goals.* Performance under each of the single-family housing goals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Enterprise transactions or activities that are not mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1282.16(b).

(1) *The numerator.* The numerator of each fraction is the number of mortgage purchases of an Enterprise in a particular year that finance owner-occupied single-family properties that count toward achievement of a particular single-family housing goal.

(2) *The denominator.* The denominator of each fraction is the total number of mortgage purchases of an Enterprise in a particular year that finance owner-occupied single-family properties. A separate denominator shall be calculated for purchase money mortgages and for refinancing mortgages.

(b) *Missing data or information for single-family housing goals.* When an Enterprise lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular single-family housing goal, that mortgage purchase shall be included in the denominator for that housing goal, except under the circumstances described in this paragraph (b).

(1) Mortgage purchases financing owner-occupied single-family properties shall be evaluated based on the income of the mortgagors and the area median income at the time the mortgage was originated. To determine whether mortgages may be counted under a particular family income level, *i.e.,* low- or very low-income, the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under § 1282.17.

(2) When the income of the mortgagor(s) is not available to determine whether a mortgage purchase counts toward achievement of a particular single-family housing goal, an Enterprise's performance with respect to such mortgage purchase may be evaluated using estimated affordability information by multiplying the number of mortgage purchases with missing borrower income information in each census tract by the percentage of all single-family owner-occupied mortgage originations in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available.

(3) The estimation methodology in paragraph (b)(2) of this section may be used up to a nationwide maximum that shall be calculated by multiplying, for each census tract, the percentage of all single-family owner-occupied mortgage originations with missing borrower incomes (as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available for home purchase and refinance mortgages, respectively) by the number of Enterprise mortgage purchases secured by single-family owner-occupied properties for each census tract, summed up over all census tracts. Separate nationwide maximums shall be calculated for purchase money mortgages and for refinancing mortgages. If the nationwide maximum is exceeded, then the estimated number of goal-qualifying mortgages will be adjusted by the ratio of the applicable nationwide maximum to the total number of mortgage purchases secured by single-family owner-occupied properties for the Enterprise in that year. Mortgage purchases in excess of the nationwide maximum, and any units for which estimation information is not available, shall remain in the denominator of the respective goal calculation.

(c) *Counting dwelling units for multifamily housing goal and subgoal.* Performance under the multifamily housing goal and subgoal shall be measured by counting the number of dwelling units that count toward achievement of a particular housing goal or subgoal in all multifamily properties financed by mortgages purchased by an Enterprise in a particular year. Only dwelling units that are financed by mortgage purchases, as defined by FHFA, and that are not specifically excluded as ineligible under § 1282.16(b), may be counted for purposes of the multifamily housing goal and subgoal.

(d) *Counting rental units.* For purposes of counting rental units toward achievement of the multifamily housing goal and subgoal, mortgage purchases financing such units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.,* known to a lender, and the area median income at the time the mortgage was acquired.

(1) *Use of income.* Each Enterprise shall require lenders to provide to the Enterprise tenant income information, but only when such information is known to the lender. When the income of actual tenants is available, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in § 1282.17, or as provided in § 1282.18 if family size is not known.

(i) When such tenant income information is available for all occupied units, the Enterprise's performance shall be based on the income of the tenants in the occupied units. For unoccupied units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not available for rent, the Enterprise shall use rent levels for comparable units in the property to determine affordability, except as provided in paragraph (d)(1)(ii) of this section.

(ii) When income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum income level established under such housing program for that unit. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each Enterprise must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(2) *Use of rent.* When the income of the prospective or actual tenants of a dwelling unit is not available, performance under the multifamily housing goal and subgoal will be evaluated based on rent and whether the rent is affordable to the income group

targeted by the housing goal and subgoal. A rent is affordable if the rent does not exceed the maximum income levels as provided in § 1282.19. In determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(3) *Model units and rental offices.* A model unit or rental office in a multifamily property may be counted for purposes of the multifamily housing goal and subgoal only if an Enterprise determines that the number of such units is reasonable and minimal considering the size of the multifamily property.

(4) *Timeliness of information.* In evaluating affordability under the multifamily housing goal and subgoal, each Enterprise shall use tenant and rental information as of the time of mortgage acquisition.

(e) *Missing data or information for multifamily housing goal and subgoal.*— (1) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a multifamily mortgage purchased by an Enterprise counts toward achievement of the multifamily housing goal or subgoal because neither the income of prospective or actual tenants, nor the actual or average rental data, are available, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information by multiplying the number of rental units with missing affordability information in properties securing multifamily mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal and subgoal, as determined by FHFA based on the most recent decennial census.

(2) The estimation methodology in paragraph (e)(1) of this section may be used up to a nationwide maximum of ten percent of the total number of rental units in properties securing multifamily mortgages purchased by the Enterprise in the current year. Multifamily rental units in excess of this maximum, and any units for which estimation information is not available, shall not be counted for purposes of the multifamily housing goal and subgoal.

(f) *Credit toward multiple goals.* A mortgage purchase (or dwelling unit financed by such purchase) by an Enterprise in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that year.

(g) *Application of median income.*— (1) For purposes of determining an area's median income under §§ 1282.17 through 1282.19 and the definitions in § 1282.1, the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State non-metropolitan median income is higher than the county's median income, the area is the State non-metropolitan area.

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract;

(ii) A census place code;

(iii) A block-group enumeration district;

(iv) A nine-digit zip code; or

(v) Another appropriate geographic segment that is partially located in more than one area ("split area").

(h) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases (or dwelling units) for that year; a sampling of such purchases (or dwelling units) is not acceptable.

(i) *Newly available data.* When an Enterprise uses data to determine whether a mortgage purchase (or dwelling unit) counts toward achievement of any goal and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.

### § 1282.16 Special counting requirements.

(a) *General.* FHFA shall determine whether an Enterprise shall receive full, partial, or no credit toward achievement of any of the housing goals for a transaction that otherwise qualifies under this part. In this determination, FHFA will consider whether a transaction or activity of the Enterprise is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that such mortgage purchase actually fulfills the Enterprise's purposes and is in accordance with its Charter Act.

(b) *Not counted.* The following transactions or activities shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating either Enterprise's performance under the housing goals, even if the transaction or activity would otherwise be counted pursuant to paragraph (c) of this section:

(1) Equity investments in low-income housing tax credits;

(2) Purchases of State and local government housing bonds except as provided in paragraph (c)(8) of this section;

(3) Purchases of single-family non-conventional mortgages and multifamily non-conventional mortgages, except:

(i) Multifamily mortgages acquired under a risk-sharing arrangement with a Federal agency;

(ii) Multifamily mortgages under other multifamily mortgage programs involving Federal guarantees, insurance or other Federal obligation where FHFA determines in writing that the financing needs addressed by the particular mortgage program are not well served and that the mortgage purchases under such program should count under the housing goals;

(4) Commitments to buy mortgages at a later date or time;

(5) Options to acquire mortgages;

(6) Rights of first refusal to acquire mortgages;

(7) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;

(8) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;

(9) Single-family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if the Enterprise already owns or has an interest in the balloon note at the time conversion occurs;

(10) Purchases of subordinate lien mortgages (second mortgages);

(11) Purchases of mortgages or interests in mortgages that were previously counted by the Enterprise under any current or previous housing goal within the five years immediately preceding the current performance year;

(12) Purchases of mortgages where the property, or any units within the property, have not been approved for occupancy;

(13) Purchases of private label securities;

(14) Enterprise contributions to the Housing Trust Fund (12 U.S.C. 4568) or the Capital Magnet Fund (12 U.S.C. 4569), and mortgage purchases funded with such grant amounts; and

(15) Any combination of factors in paragraphs (b)(1) through (b)(14) of this section.

(c) *Other special rules.* Subject to FHFA's determination of whether an Enterprise shall receive full, partial, or

no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the transactions and activities identified in this paragraph (c) shall be treated as mortgage purchases as described. A transaction or activity that is covered by more than one paragraph below must satisfy the requirements of each such paragraph. The mortgages (or dwelling units, for the multifamily housing goals) from each such transaction or activity shall be included in the denominator in calculating the Enterprise's performance under the housing goals, and shall be included in the numerator, as appropriate.

(1) *Credit enhancements.*—(i) Mortgages (or dwelling units) financed under a credit enhancement entered into by an Enterprise shall be treated as mortgage purchases for purposes of the housing goals only when:

(A) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency); and

(B) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds.

(ii) When an Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such activities to count toward achievement of the housing goals.

(2) [Reserved.]

(3) *Risk-sharing.* Mortgages purchased under risk-sharing arrangements between an Enterprise and any Federal agency under which the Enterprise is responsible for a substantial amount of the risk shall be treated as mortgage purchases for purposes of the housing goals.

(4) *Participations.* Participations purchased by an Enterprise shall be treated as mortgage purchases for purposes of the housing goals only when the Enterprise's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominiums.*—(i) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a mortgage on a condominium unit shall be treated as a mortgage purchase for purposes of the housing goals. Such a purchase shall be counted in the same manner as a mortgage purchase of single-family owner-occupied units.

(ii) The purchase of a mortgage on a cooperative building ("a blanket loan") or a mortgage on a condominium project shall be treated as a mortgage purchase for purposes of the housing goals. The purchase of a blanket loan or a condominium project mortgage shall be counted in the same manner as a mortgage purchase of a multifamily rental property.

(iii) Where an Enterprise purchases both a blanket loan on a cooperative building and share loans for units in the same building, both the blanket loan and the share loan(s) shall be treated as mortgage purchases for purposes of the housing goals. Where an Enterprise purchases both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units shall be treated as mortgage purchases for purposes of the housing goals.

(6) *Seasoned mortgages.* An Enterprise's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of the housing goals, except where the Enterprise has already counted the mortgage under any current or previous housing goal within the five years immediately preceding the current performance year.

(7) *Purchase of refinancing mortgages.* The purchase of a refinancing mortgage by an Enterprise shall be treated as a mortgage purchase for purposes of the housing goals only if the refinancing is an arms-length transaction that is borrower-driven.

(8) *Mortgage revenue bonds.* The purchase or guarantee by an Enterprise of a mortgage revenue bond issued by a State or local housing finance agency shall be treated as a purchase of the underlying mortgages for purposes of the housing goals only to the extent the Enterprise has sufficient information to determine whether the underlying mortgages or mortgage-backed securities qualify for inclusion in the numerator for one or more housing goal.

(9) [Reserved.]

(10) *Loan modifications.* An Enterprise's permanent modification, in accordance with the Making Home Affordable program announced on March 4, 2009, of a loan that is held in the Enterprise's portfolio or that is in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase for purposes of the housing goals. Each such permanent loan modification shall be counted in the same manner as a purchase of a refinancing mortgage.

(11) [Reserved.]

(12) [Reserved.]

(13) [Reserved.]

(14) *Seller dissolution option.*—(i) Mortgages acquired through transactions involving seller dissolution options shall be treated as mortgage purchases for purposes of the housing goals, only when:

(A) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(B) The transaction is not dissolved during the one-year minimum lockout period.

(ii) The Director may grant an exception to the one-year minimum lockout period described in paragraphs (c)(14)(i)(A) and (B) of this section, in response to a written request from an Enterprise, if the Director determines that the transaction furthers the purposes of the Safety and Soundness Act and the Enterprise's Charter Act.

(iii) For purposes of this paragraph (c)(14), "seller dissolution option" means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

(d) *HOEPA mortgages and mortgages with unacceptable terms or conditions.* HOEPA mortgages and mortgages with unacceptable terms or conditions, as defined in § 1282.1, shall be treated as mortgage purchases for purposes of the housing goals and shall be included in the denominator for each applicable single-family housing goal, but such mortgages shall not be counted in the numerator for any housing goal.

(e) *FHFA review of transactions.* FHFA may determine whether and how any transaction or class of transactions shall be counted for purposes of the housing goals, including treatment of missing data. FHFA will notify each Enterprise in writing of any determination regarding the treatment of any transaction or class of transactions under the housing goals.

**§ 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).**

In determining whether a dwelling unit is affordable where income information (and family size, for rental housing) is known to the Enterprise, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:

(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

| Number of persons in family | Percentage of area median income |
|---|---|
| 1 | 70 |
| 2 | 80 |
| 3 | 90 |
| 4 | 100 |
| 5 or more | * |

*100% plus (8% multiplied by the number of persons in excess of 4).

(b) *Low-income (80%)* means:

(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

| Number of persons in family | Percentage of area median income |
|---|---|
| 1 | 56 |
| 2 | 64 |
| 3 | 72 |
| 4 | 80 |
| 5 or more | * |

*80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) *Low-income (60%)* means:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

| Number of persons in family | Percentage of area median income |
|---|---|
| 1 | 42 |
| 2 | 48 |
| 3 | 54 |
| 4 | 60 |
| 5 or more | * |

*60% plus (4.8% multiplied by the number of persons in excess of 4).

(d) *Very low-income* means:

(1) In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

| Number of persons in family | Percentage of area median income |
|---|---|
| 1 | 35 |
| 2 | 40 |
| 3 | 45 |
| 4 | 50 |
| 5 or more | * |

*50% plus (4.0% multiplied by the number of persons in excess of 4).

(e) *Extremely low-income* means:

(1) In the case of owner-occupied units, income not in excess of 30 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

| Number of persons in family | Percentage of area median income |
|---|---|
| 1 | 21 |
| 2 | 24 |
| 3 | 27 |
| 4 | 30 |
| 5 or more | * |

*30% plus (2.4% multiplied by the number of persons in excess of 4).

**§ 1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).**

In determining whether a rental unit is affordable where family size is not known to the Enterprise, income will be adjusted using unit size, and affordability determined as follows:

(a) *For moderate-income,* the income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 70 |
| 1 bedroom | 75 |
| 2 bedrooms | 90 |
| 3 bedrooms or more | * |

*104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income (80%),* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 56 |
| 1 bedroom | 60 |
| 2 bedrooms | 72 |
| 3 bedrooms or more | * |

*83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c) *For low-income (60%),* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 42 |
| 1 bedroom | 45 |
| 2 bedrooms | 54 |
| 3 bedrooms or more | * |

*62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

(d) *For very low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 35 |
| 1 bedroom | 37.5 |
| 2 bedrooms | 45 |
| 3 bedrooms or more | * |

*52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

(e) *For extremely low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 21 |
| 1 bedroom | 22.5 |
| 2 bedrooms | 27 |
| 3 bedrooms or more | * |

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

**§ 1282.19 Affordability—Rent level definitions—tenant income is not known.**

For purposes of determining whether a rental unit is affordable where the income of the family in the dwelling unit is not known to the Enterprise, the

affordability of the unit is determined based on unit size as follows:

(a) *For moderate-income,* maximum affordable rents to count as housing for moderate-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 21 |
| 1 bedroom | 22.5 |
| 2 bedrooms | 27 |
| 3 bedrooms or more | * |

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income (80%),* maximum affordable rents to count as housing for low-income (80%) families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 16.8 |
| 1 bedroom | 18 |
| 2 bedrooms | 21.6 |
| 3 bedrooms or more | * |

*24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3).

(c) *For low-income (60%),* maximum affordable rents to count as housing for low-income (60%) families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 12.6 |
| 1 bedroom | 13.5 |
| 2 bedrooms | 16.2 |
| 3 bedrooms or more | * |

*18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).

(d) *For very low-income,* maximum affordable rents to count as housing for very low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 10.5 |
| 1 bedroom | 11.25 |
| 2 bedrooms | 13.5 |
| 3 bedrooms or more | * |

*15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

(e) *For extremely low-income,* maximum affordable rents to count as housing for extremely low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

| Unit size | Percentage of area median income |
|---|---|
| Efficiency | 6.3 |
| 1 bedroom | 6.75 |
| 2 bedrooms | 8.1 |
| 3 bedrooms or more | * |

*9.36% plus (1.08% multiplied by the number of bedrooms in excess of 3).

(f) *Missing Information.* Each Enterprise shall make every effort to obtain the information necessary to make the calculations in this section. If an Enterprise makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, the units shall be assumed to be efficiencies except as provided in § 1282.15(e)(1).

**§ 1282.20 Determination of compliance with housing goals; notice of determination.**

(a) *Single-family housing goals.* The Director shall evaluate each Enterprise's performance under the low-income families housing goal, the very low-income families housing goal, the low-income areas housing goal, the low-income areas housing subgoal, and the refinancing mortgages housing goal on an annual basis. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet a single-family housing goal established by this subpart, the Director shall notify the Enterprise in writing of such preliminary determination.

(b) *Multifamily housing goal and subgoal.* The Director shall evaluate each Enterprise's performance under the multifamily low-income housing goal and the multifamily very low-income housing subgoal on an annual basis. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet a multifamily housing goal or subgoal established by this subpart, the Director shall notify the Enterprise in writing of such preliminary determination.

(c) Any notification to an Enterprise of a preliminary determination under this section shall provide the Enterprise with an opportunity to respond in writing in accordance with the procedures at 12 U.S.C. 4566(b).

**§ 1282.21 Housing plans.**

(a) *General.* If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet any housing goal and that the achievement of the housing goal was or is feasible, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Enterprise will take:

(i) To achieve the goal for the next calendar year; and

(ii) If the Director determines that there is a substantial probability that the Enterprise will fail to meet a housing goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of the year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Enterprise shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Enterprise to submit a housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plans.* The Director shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (c)(5).

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise shall submit an amended plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit a new plan.

## Subpart C—[Reserved]

## Subpart D—Reporting Requirements

**§ 1282.61 General.**

This subpart establishes data submission and reporting requirements to carry out the requirements of the Enterprises' Charter Acts and the Safety and Soundness Act.

**§ 1282.62 Mortgage reports.**

(a) *Loan-level data elements.* To implement the data collection and

submission requirements for mortgage data, and to assist the Director in monitoring the Enterprises' housing goal activities, each Enterprise shall collect and compile computerized loan-level data on each mortgage purchased in accordance with 12 U.S.C. 1456(e) and 1723a(m). The Director may, from time to time, issue a list entitled "Required Loan-level Data Elements" specifying the loan-level data elements to be collected and maintained by the Enterprises and provided to the Director. The Director may revise the list by written notice to the Enterprises.

(b) *Quarterly Mortgage Reports.* Each Enterprise shall submit to the Director a quarterly Mortgage Report. The fourth quarter Mortgage Report shall serve as the Annual Mortgage Report and shall be designated as such. Each Mortgage Report shall include:

(1) Aggregations of the loan-level mortgage data compiled by the Enterprise under paragraph (a) of this section for year-to-date mortgage purchases, in the format specified in writing by the Director;

(2) Year-to-date dollar volume, number of units, and number of mortgages on owner-occupied and rental properties purchased by the Enterprise that do, and do not, qualify under each housing goal as set forth in this part; and

(3) Year-to-date computerized loan-level data consisting of the data elements required under paragraph (a) of this section.

(c) *Timing of Reports.* The Enterprises shall submit the Mortgage Report for each of the first 3 quarters of each year within 60 days of the end of the quarter. Each Enterprise shall submit its Annual Mortgage Report within 75 days after the end of the calendar year.

(d) *Revisions to Reports.* At any time before submission of its Annual Mortgage Report, an Enterprise may revise any of its quarterly reports for that year.

(e) *Format.* The Enterprises shall submit to the Director computerized loan-level data with the Mortgage Report, in the format specified in writing by the Director.

### § 1282.63 Annual Housing Activities Report.

To comply with the requirements in sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act and assist the Director in preparing the Director's Annual Report to Congress, each Enterprise shall submit to the Director an AHAR including the information listed in those sections of the Charter Acts. Each Enterprise shall submit such report within 75 days after the end of each calendar year, to the Director, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Each Enterprise shall make its AHAR available to the public online and at its principal and regional offices. Before making any such report available to the public, the Enterprise may exclude from the report any information that the Director has deemed proprietary.

### § 1282.64 Periodic reports.

Each Enterprise shall provide to the Director such reports, information and data as the Director may request from time to time.

### § 1282.65 Enterprise data integrity.

(a) *Certification.*—(1) The senior officer of each Enterprise who is responsible for submitting the fourth quarter Annual Mortgage Report and the AHAR under sections 309(m) and (n) of the Fannie Mae Charter Act or sections 307(e) and (f) of the Freddie Mac Act, as applicable, or for submitting any other report(s), data or information for which certification is requested in writing by the Director, shall certify such report(s), data or information.

(2) The certification shall state as follows: "To the best of my knowledge and belief, the information provided herein is true, correct and complete."

(b) *Adjustment to correct errors, omissions or discrepancies in AHAR data.* FHFA shall determine the official housing goal performance figure for each Enterprise under the housing goals on an annual basis. FHFA may resolve any error, omission or discrepancy by adjusting the Enterprise's official housing goal performance figure. If the Director determines that the year-end data reported by an Enterprise for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages (or dwelling units) that the Director determines were overstated in the prior year's goal performance.

Dated: September 1, 2010.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2010–22361 Filed 9–13–10; 8:45 am]

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**Federal Register**

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| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
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## FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

53563–53840 ..... 1
53841–54004 ..... 2
54005–54270 ..... 3
54271–54460 ..... 7
54461–54758 ..... 8
54759–55254 ..... 9
55255–55452 ..... 10
55453–55662 ..... 13
55663–55940 ..... 14

## CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 2 CFR

Subt. A ..... 55671
170 ..... 55663

### 3 CFR

**Proclamations:**
8549 ..... 53563
8550 ..... 54449
8551 ..... 54451
8552 ..... 54453
8553 ..... 54455
8554 ..... 54757
8555 ..... 55253

**Executive Orders:**
13551 ..... 53837
13552 ..... 54263

**Administrative Orders:**
Presidential Determinations:
No. 2010-13 of September 2, 2010 ..... 54459
Notice of September 10, 2010 ..... 55661

### 6 CFR

**Proposed Rules:**
5 ..... 54528, 55290

### 7 CFR

6 ..... 53565
301 ..... 54461
761 ..... 54005
762 ..... 54005
764 ..... 54005
765 ..... 54005
766 ..... 54005
1250 ..... 55255
3430 ..... 54759

**Proposed Rules:**
253 ..... 54530
1250 ..... 55292

### 10 CFR

**Proposed Rules:**
430 ..... 54048
431 ..... 55068

### 11 CFR

100 ..... 55257

### 12 CFR

740 ..... 53841
745 ..... 53841
1249 ..... 55892
1282 ..... 55892

**Proposed Rules:**
1101 ..... 54052

### 14 CFR

39 ..... 53843, 53846, 53849, 53851, 53855, 53857, 53859, 53861, 54462, 55453, 55455, 55459, 55461
71 ..... 55267
73 ..... 53863
97 ..... 54766, 54769

**Proposed Rules:**
39 ..... 53609, 54536, 55492, 55691
71 ..... 53876, 54057, 54058
117 ..... 55852
121 ..... 55852

### 15 CFR

730 ..... 53864
732 ..... 53864
734 ..... 53864, 54271
736 ..... 53864
738 ..... 53864
740 ..... 53864
742 ..... 53864, 54271
743 ..... 53864, 54271
744 ..... 53864, 54271
746 ..... 53864
747 ..... 53864
748 ..... 53864
750 ..... 53864
752 ..... 53864
754 ..... 53864
756 ..... 53864
758 ..... 53864
760 ..... 53864
762 ..... 53864
764 ..... 53864
766 ..... 53864
768 ..... 53864
770 ..... 53864
772 ..... 53864, 54271
774 ..... 53864, 54271
922 ..... 53567

**Proposed Rules:**
742 ..... 54540
744 ..... 54540
746 ..... 54540
806 ..... 53611
922 ..... 55692

### 16 CFR

310 ..... 55269

### 17 CFR

1 ..... 55410
3 ..... 55410
4 ..... 55410
5 ..... 55410
10 ..... 55410
140 ..... 55410
145 ..... 55410
147 ..... 55410
160 ..... 55410
166 ..... 55410
200 ..... 54464
240 ..... 54465

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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**H.R. 511/P.L. 111–231**
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

**H.R. 2097/P.L. 111–232**
Star-Spangled Banner Commemorative Coin Act (Aug. 16, 2010; 124 Stat. 2490)

**H.R. 3509/P.L. 111–233**
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

**H.R. 4275/P.L. 111–234**
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the ''John C. Godbold Federal Building''. (Aug. 16, 2010; 124 Stat. 2494)

**H.R. 5278/P.L. 111–235**
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the ''President Ronald W. Reagan Post Office Building''. (Aug. 16, 2010; 124 Stat. 2495)

**H.R. 5395/P.L. 111–236**
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the ''Paula Hawkins Post Office Building''. (Aug. 16, 2010; 124 Stat. 2496)

**H.R. 5552/P.L. 111–237**
Firearms Excise Tax Improvement Act of 2010 (Aug. 16, 2010; 124 Stat. 2497)

**Last List August 16, 2010**

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